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UNITED STATES CUSTOMS COURT

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[4] Entered on duty May 19, 1975.
[5] Entered on duty March 10, 1975 to May 18, 1975.

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F-3-76

Customs

(C.D. 4578)

NAFTONE, INC. *v.* UNITED STATES

Chemicals

CEMENT

A substance dissolved after importation and used to bond polyvinyl chloride to itself as well as to other substances such as leather and rubber is a cement within the common meaning of that term.

Court No. 68/64026

Port of New York

[Judgment for plaintiff.]

(Decided January 16, 1975)

Sharretts, Paley, Carter & Blauvelt (*Eugene F. Blauvelt* and *Gail T. Cumins* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

WATSON, Judge: The merchandise at issue in this case is a substance with the trade name Desmocoll 400. The merchandise was classified as "plastics materials" under item 405.25 of the TSUS, as modified by Presidential Proclamation 3822, and was assessed with duty at the rate of 2.5¢ per pound plus 16% ad valorem. Plaintiff claims the merchandise is more specifically provided for as cement, not specially provided for, under item 494.60 of the TSUS, as modified, *supra*, dutiable at the rate of 4% ad valorem.

There is no real factual dispute in this case. The merchandise is a hydroxylated polyurethane formed principally by the reaction of toluene diisocyanate and a polyadipate. It was created for the purpose of bonding polyvinyl chloride to itself and to other materials such as rubber or leather and finds its chief applications in the shoe industry. It is imported as a solid, in fragments which can be called chips or flakes. In use Desmocoll 400 is ordinarily applied to the sub-

stances being bonded after it has been dissolved in solvent such as methyl ethyl ketone, ethyl acetate or acetone. In specific applications other substances are occasionally added. For example, chlorinated rubber is added to promote adhesion when a rubber-type substrate is being bonded to polyvinyl chloride. Generally the bonding is accomplished under the application of heat. Although as a practical matter Desmocoll 400 is not used as an adhesive in its imported condition, it is definitely capable of such use and is the substance which produces the adhesive affect desired by the users.

The real issue in this case can best be phrased as whether the imported substance which, in its origin and composition appears to be a plastics material, is a cement or merely an ingredient used in the making of a cement.

The evidence in this case establishes overwhelmingly that the imported substance is indeed a cement within the common meaning of that term. I find that what is done to the importation in the process of preparing it for application is merely the readying of the cementing substance for use and not the creation of a hitherto nonexistent cement. A substance which is specifically designed for the cementing of materials to each other and which, in its imported condition can accomplish this purpose, is a cement within the meaning of that term. Even if this substance is a plastics material, in the sense that the cement it forms is a "plastic" cement, it is more specifically provided for as a cement.

Headnote 1 to part 13 of schedule 4 of the TSUS (the part in which the provision for cements of item 494.60 appears) makes it plain that a product described in item 494.60 as well as in part 1 of schedule 4 (the part which covers "plastics materials" of benzenoid origin) remains classifiable in item 494.60. This is a noteworthy exception to the general rule contained in said headnote 1 that a "benzenoid" part 1 classification prevails over a competing "nonbenzenoid" classification. Accordingly, a cement which is also a "plastics material" is properly classifiable as a cement.

I continue to adhere to the definition of cement originally relied on in the case of *Norton & Ellis, Inc.* v. *United States*, 52 Cust. Ct. 76, C.D. 2440 (1964), and followed in *Alloys Unlimited, Inc.* v. *United States*, 67 Cust. Ct. 63, C.D. 4253 (1971), which defines cement, in essence, as any substance used by men or animals for making bodies adhere to each other. The importation is definitely such a substance. The fact that it is used ordinarily in solution and under the application of heat does not detract from its being a cement in its imported condition. I can find no support for the proposition that in order to be a cement a substance must be imported in the form in which it is usually applied. As far as I can see, the importation is simply a

cement in a solid concentrated form and entitled to classification as such.

Defendant's extended and scholarly attempt to expand the scope of the provision for plastics materials at the expense of the provision for cements is to no avail particularly in light of the aforementioned headnote. The superior specificity of the provision for cement is clear, the meaning of the term is unambiguous and there is no reason to resort to legislative history and no justification for a definition of cement more restricted than the one to which I adhere.

For the reasons set out above, I find that the importation is properly classifiable as a cement, not specially provided for, under item 494.60 of the TSUS, as modified, and dutiable at the rate of 4% ad valorem. Judgment will enter accordingly.

(C.D. 4579)

W. T. Grant Co. *v.* United States

Cottons—Shirt and Short and Shirt and Slack Sets—Entireties

Articles invoiced as cabana sets, shirt and short sets, shirt and slack sets, and flannel shirt and lined corduroy slack sets, which were designed, purchased, imported, invoiced, advertised, and sold at wholesale and at retail as a unit, and not separately, held properly dutiable as entireties at 20 percent ad valorem under paragraph 919 of the Tariff Act of 1930, as modified, as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for. *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966) and *The Nissho American Corp.* v. *United States*, 64 Cust. Ct. 378, C.D. 4005 (1970) followed.

Court Nos. 64/9519, etc.

Port of New York

[Judgment for plaintiff.]

(Decided January 20, 1975)

Sharretts, Paley, Carter & Blauvelt (*Donald W. Paley* and *Samuel Blecher* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

Maletz, Judge: These consolidated actions involve the dutiable status of merchandise in chief value of cotton consisting of cotton shirts, cotton shorts and cotton slacks. The merchandise—which was imported from Japan and Hong Kong from 1959 to 1963 and entered at the port of New York—was invoiced as Little Boys'

Cabana Sets, Little Boys' Shirt and Short Sets, Little Boys' Shirt and Slack Sets and Little Boys' Flannel Shirt and Lined Corduroy Slack Sets.

The cotton shirts were assessed at 25 percent ad valorem as shirts of cotton, not knit or crocheted, under paragraph 919 of the Tariff Act of 1930, as modified, T.D. 51802, and the cotton slacks and shorts were assessed at 20 percent ad valorem as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for, under that same paragraph, as modified.

Plaintiff claims that the cabana sets and the shirt and short sets are similar in all material respects to the cabana sets in *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966), and that the shirt and slack sets and the flannel shirt and lined corduroy slack sets are similar to the flannel shirts and corduroy longie sets in *The Nissho American Corp.* v. *United States*, 64 Cust. Ct. 378, C.D. 4005 (1970), which sets, in each case, were held to be entireties dutiable at 20 percent ad valorem as clothing and wearing apparel, wholly or in chief value of cotton, not specially provided for, under paragraph 919, as modified. Plaintiff further claims that these two cases are *stare decisis* of the issue here, and that the sets in question are likewise entireties dutiable at 20 percent under the same provision of paragraph 919.

Defendant does not dispute the holdings in the cited cases; rather it points out that in the present case there is an absence of samples of the imported articles and argues that the record does not establish with any certainty the nature and identity of the merchandise in question. In short, defendant's position is that plaintiff has failed to establish that the merchandise in question consists of entireties for tariff assessment purposes.

Thus the issue here, as it was in *Miniature* and *Nissho*, is whether the record establishes that the imported merchandise consists of entireties dutiable under paragraph 919 as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for, at 20 percent ad valorem.[1]

I

The record in the present case consists of (1) the testimony of Jerome E. Garrity in the *Nissho* case (including the exhibits to which

[1] Previously, the plaintiff herein filed two motions for summary judgment, covering all of the instant entries prior to consolidation for trial, claiming that no triable issue of fact existed, and that plaintiff was entitled to judgment as a matter of law. These motions for summary judgment were denied on the ground that a genuine factual issue remained for trial, specifically the nature and identity of the merchandise in question. See *W. T. Grant Co.* v. *United States*, 70 Cust. Ct. 354, C.R.D. 73-10 (1973); *W. T. Grant Co.* v. *United States*, 70 Cust. Ct. 372, C.R.D. 73-14 (1973).

his testimony referred), which was incorporated in the present case; (2) the testimony of Drewry F. Wofford, Charles Seitz and Donald Spencer; and (3) the official papers in the present case. At the time of their testimony, all the witnesses were employees of plaintiff, W. T. Grant Co., a nationwide retailer with about twelve hundred stores located throughout the country, and all testified on behalf of Grant. No witnesses appeared for defendant.

At the time of his testimony in the *Nissho* case in November 1968, Mr. Garrity was senior buyer of the boys' department at Grant, after 18 years of service with the company, during which time he had spent 6 years in the infants' and children's department, mostly as its senior buyer, and an earlier year in the infants' and children's department.

Mr. Wofford, at the time he testified in the present case,[2] had almost 26 years of service with Grant during which time he had spent 10 years from 1951 to 1961 as a merchandiser, buyer, stylist, etc. of, primarily, little boys' clothing.

Mr. Seitz, at the time he testified was the import vice president of Grant after nearly 38 years of service with the company, during which time he served from 1946 to 1950 as a buyer of little boys' wear in the children's wear department, thereafter until 1962 as senior buyer of the children's wear department, and from 1962 to 1967 as the merchandise manager of the fashion group of which the children's wear department is a part.

Mr. Spencer, at the time he testified, was a senior buyer of footwear after 20 years of service with Grant. During this time, specifically from 1962 until 1965, he was a buyer in the children's department.

All of the plaintiff's witnesses had experience with, and participated in, the design, production, purchase, importation, advertisement and sale of the merchandise here involved. In addition, Mr. Garrity was familiar with the merchandise which was the subject of the *Nissho* case, while the other witnesses were familiar with the merchandise in both the *Nissho* and *Miniature* cases.

Based on the testimony of these witnesses—which the court finds credible—the record, it is concluded, establishes that the Little Boys' Cabana Sets, Little Boys' Shirt and Short Sets, Little Boys' Shirt and Slack Sets and Little Boys' Flannel Shirt and Lined Corduroy Slack Sets here in issue were always ordered by name; designed as a unit; matched as to color, print and fabric; purchased as a unit; pinned together as sets; inspected abroad for conformance with specifications; inspected after importation for conformance with

[2] All the testimony in the present case was taken on February 15, 1974.

specifications;[3] invoiced as a unit to the branch stores of the plaintiff; advertised as a unit; and never broken up and sold separately. The record also establishes that the sets were not imported without the top and bottom portions being color coordinated; the word "sets" as used on the invoices meant coordinated; and for all practical purposes the top and bottom portion of the sets had no commercial value except as they were joined as a unit.

Further, it is worthy of mention that the testimony of Garrity in the *Nissho* case concerned merchandise of exactly the same type as the Little Boys' Flannel Shirt and Lined Corduroy Slack Sets that are involved in the present case. Thus Garrity testified that the merchandise to which he referred in *Nissho* bore W. T. Grant Co. numbers in the 29000 range and that in that range Grant had been importing four specific numbers, i.e., 29462, 29476, 29645, and 29652. These same numbers, it is to be noted, appear on many of the invoices here before the court. It is to be added that these numbers were retained and not reassigned to another type of merchandise as long as the item to which that number was assigned remained on sale, was available from the warehouse or was the subject of reorder. The best evidence of the fact that such sets were the subject of consistent reorder at the Grant company is the continuing flow of importations by Grant of this merchandise at New York during the period from 1959 to 1963.

Garrity's testimony also establishes the similarity in all material respects of the Little Boys' Flannel Shirt and Lined Corduroy Slack Sets here in issue to the merchandise which was the subject of the *Nissho* case.

In addition, each of the witnesses for plaintiff in the present case, Wofford, Seitz and Spencer, tied their testimony to the merchandise

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[3] The court is quite mindful of the fact that in the course of his deposition the witness Spencer stated that to his knowledge no one inspected the subject merchandise after it was imported to see if it conformed to what was ordered. At the trial Spencer conceded that the foregoing statement was in error. R. 127. He further testified on this score (R. 122-3):

Q. Would there be or would there have been any further checks once the merchandise left the country of exportation as far as whether or not the merchandise conformed to the samples?

A. Yes, normally we would, after the merchandise arrived in this country, we would call our distribution center or our warehouse and ask them to send a case into the buying division. Also, we didn't always do that—if not, we would visit the stores to check to see if the quality of the merchandise was exactly the way we bought it.

Q. Would it always be you?

A. It could be someone else.

Additionally, Spencer testified (R. 127):

• • • I did see the merchandise, your Honor, after it arrived. I can only say that I did not particularly call it in to personally inspect it, but I did see if it was as we bought it. I did have samples in my office. We did call in samples.

Considering his demeanor on the witness stand, and the manner in which he responded to questions at trial, I am persuaded that Spencer was a credible witness and that he made an honest error in stating in his deposition that the subject merchandise was not inspected after it was imported. Further, the testimony of the witness Wofford confirmed that the merchandise was inspected after importation for conformance with specifications. See R. 35-7, 48-9.

involved here by examination of the invoices and then, after examination of the samples in the *Nissho* and *Miniature* cases, testified that the merchandise here in issue is similar to the merchandise involved in those cases.

II

As we have seen, the *Miniature* case, *supra*, 54 CCPA 11, involved certain children's cabana sets and the *Nissho* case, *supra*, 64 Cust. Ct. 378, involved certain children's shirt and longie sets, which sets in each case were held to be entireties dutiable at 20 percent ad valorem as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for, under paragraph 919 of the Tariff Act of 1930, as modified, T.D. 51802. In the *Miniature* case, the appellate court in determining that the cabana sets were entireties relied on the following criteria (54 CCPA at 17):

> Classification is determined by the condition of the articles at the time of importation. *United States* v. *Schoverling*, *supra*. Viewed at that time, the evidence shows that they were designed as a unit, matched as to color, print and fabric, imported as a unit and pinned together, invoiced as a unit, and sold as a unit both in wholesale and retail channels. When the parts of the merchandise are separated and either part is returned for credit, or when both parts are returned for credit, the parts of the unit are either given to charity or placed in the waste basket. Thus, there appears to be no commercial value of the separate articles comprising the unit except as they are joined as a unit.

The court in *Miniature* added (54 CCPA at 18):

> There remains for consideration whether this determination circumvents any intent of Congress. We think the evidence establishes that the upper portions of the cabana sets are not the "shirts" on which Congress has fixed a duty of 25% ad val. Appellant has imported what has been designed and sold exclusively as a unit. The upper portion, from the evidence of record, has no commercial value when returned. The upper portions are not imported as separate shirts. In view of the evidence we think the upper portion of the imported sets is more properly classified under paragraph 919 as part of and entirely of clothing rather than as a shirt under the same paragraph. * * *

Similarly in the *Nissho* case the court relied on the following criteria (64 Cust. Ct. at 381–2):

> The record thus establishes that the shirt and longie set herein was designed, purchased, imported, and invoiced as a unit. The two pieces were matched as to color, print and fabric. The merchandise was advertised to retail customers as a set and was so sold both at wholesale and at retail. It was never broken up and the items sold separately. If returned by a customer, it would be resold as a set or if defective, destroyed or given to charity. While the shirt portion is a shirt and the trouser portion trousers

> and the ultimate consumer may use them separately with other trousers or slacks, it is clear that they were designed and merchandised as a set to be worn together.

As previously indicated, the unrebutted testimony of the witnesses for the plaintiff in the present case is that the articles in issue are designed as a unit, matched as to color, print and fabric, purchased as a unit and pinned together as sets, inspected abroad for conformance with specifications, inspected after importation for conformance with specifications, invoiced as a unit to plaintiff's branch stores, never broken up and sold separately, advertised and sold as sets or units and, for all practical purposes, have no commercial value except as they are joined as a unit. The record in this case thus firmly establishes that the characteristics of the merchandise here in issue meet the criteria set out in the *Miniature* and *Nissho* cases.

What is more, Garrity's testimony in the *Nissho* case, incorporated herein, confirms and corroborates the similarity of Grant's merchandise to the merchandise in the *Nissho* case. Each of the other three witnesses whose testimony remains uncontradicted tied the merchandise here in issue to the exhibits in the *Miniature* and *Nissho* cases by examining the exhibits in the cited cases and testifying to their similarity.

In this latter connection, however, it is to be observed that in contrast to the situation in *Miniature* and *Nissho* where *two-piece* sets were involved, in the present case three of the entries covered by two of the protests involve *three-piece* sets consisting in each instance of a shirt and two pairs of color coordinated pants. It is of course obvious that the three-piece sets differ from the two-piece sets in price and in the quantity of articles received by the purchaser and are thus not similar to the two-piece sets in all material respects. Withal, the "similarity" test that must be met by the three-piece sets in order to be classified the same as the two-piece sets for customs purposes is—as set out in *Miniature* and *Nissho*—that at the time of importation the set shall have been designed as a unit, matched as to color, print and fabric, imported as a unit and pinned together, invoiced as a unit and sold as a unit both in wholesale and retail channels and have no commercial value except as they are joined as a unit. At the trial, the witnesses Wofford and Seitz testified without contradiction that the three-piece sets here involved—like the two-piece sets—meet each and every one of the foregoing criteria. See R. 24–27, 49–50, 110–112.

Finally, the court must conclude in the circumstances of the present case that the unavailability of a sample should not act as a bar to recovery. As to this, the witness Seitz stated that although he had

made diligent efforts to obtain samples of the actual importations he was unsuccessful because this type of merchandise stopped selling in any significant volume approximately 6 years previously. The witness stated that he had requested plaintiff's buying agent to check its offices in New York and Japan and was advised that no samples were available. He further testified that a physical inventory revealed that there was no such merchandise in plaintiff's warehouses.

Against this background, the court agrees with plaintiff's position that the deficiency caused by lack of samples has been overcome by the complete record now before the court. The three witnesses who testified were thoroughly familiar with the merchandise in question, from the designing and planning stage through its sale to the retail purchaser. They examined exhibits 1A and 1B in the *Nissho* case and exhibits 1A, 1B, 2A and 2B in the *Miniature* case and stated that except for possible differences in weight of the fabric, thread count, color, shape of a collar or number of buttons on the shirt front, those exhibits were similar to the merchandise covered in the present case insofar as design and coordination of the sets were concerned and that those exhibits were illustrative of the sets imported by Grant.

The testimony adduced at the trial now includes that of the buyers of the merchandise at bar, imported from 1959 to 1963. The witness Wofford was the buyer of little boys' clothing at Grant from 1951 to 1961, the witness Garrity for a short period of time thereafter and the witness Spencer from 1962 to 1965. These witnesses were supervised by the witness Seitz who was senior buyer for children's wear and specifically little boys' wear from 1950 to 1962 and by the witness Garrity who was senior buyer, succeeding Seitz, from 1962 onward, with Seitz supervising both the line buyer Spencer and the senior buyer Garrity from 1962 until the end of 1967. The testimony is ample, therefore, with respect to the buyers of the merchandise at bar to cover the period from long before 1959, the commencement of the importations at bar, to well after 1963, when the importations terminated. Further, the record establishes without contradiction that all of the witnesses were familiar with the imported merchandise and recognized that merchandise by the invoice description that was commonly and uniformly utilized during the period when these articles were imported.

III

In summary, the articles here, as in *Miniature* and *Nissho*, were designed to be worn together, were fastened together upon importation, were advertised and sold as a set, were never broken up and sold separately and had no commercial value as separates, Those were the facts upon which the court in *Miniature* and *Nissho* based its

decisions that such articles were not separately classifiable but were dutiable as entireties. The same reasoning is equally applicable to the present case.[4]

It is therefore held that the imported sets consist of entireties dutiable at 20 percent ad valorem under paragraph 919 of the Tariff Act of 1930, as modified, as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for. Accordingly, plaintiff's claim is sustained and judgment will be entered to that effect.

(C.D. 4580)

JOHN V. CARR & SON, INC. *v.* UNITED STATES

Hub castings

CAST-IRON ARTICLES—PARTS OF MACHINES

Unfinished cast-iron parts of machines are properly classifiable as parts of machines and not as cast-iron articles pursuant to the ordinary rules of relative specificity and statutory interpretation as contained in General Interpretative Rules 10(c), 10(h) and 10(ij).

No legislative intent is discerned to give to the TSUS provision for cast-iron articles the same exceptional scope over unfinished parts of machines as was found in the provision for castings in paragraph 327 of the Tariff Act of 1930 and in the provision for forgings in item 608.25 of the tariff schedules.

Court Nos. 68/17778, etc.

Port of Detroit

[Judgment for defendant.]

(Decided January 21, 1975)

Barnes, Richardson & Colburn (*Joseph Schwartz* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

WATSON, Judge: This case raises the same issues as were before the court in the case of *John V. Carr & Son, Inc.* v. *United States*, 66

[4] As the court observed in the *Miniature* case, *supra*, 54 CCPA at 18, an article designed and sold exclusively as a unit with a pair of pants is not the "shirts" on which Congress fixed a 25 percent rate of duty. This reasoning applies with equal force to the three-piece sets and the two-piece sets. The three-piece sets consist of one top and two pairs of color coordinated pants. The two pairs of pants were classified at the 20 percent rate applicable to clothing or articles of wearing apparel. Thus a decision upholding the claim for classification of the shirt and two pairs of pants as an entirety can only affect the rate of duty applied to the shirt in the protested classification. Clearly the shirt is an entirety with one pair of pants even if the other pair of pants be treated separately. The separation of one pair of pants from the entirety does not destroy the entirety and can have no effect upon either the rate of duty or the total amount of duty due upon all three items.

Cust. Ct. 316, C.D. 4209, 326 F. Supp. 973 (1971), in which cast-iron hubs used as parts of planetary axles were held to be properly classifiable as cast-iron articles under item 657.09 rather than as parts of machines under item 678.50. The testimony and exhibits in that case have been incorporated herein. However, I cannot incorporate or perpetuate the conclusions reached therein.

It is undeniable that these hubs are chiefly used in making planetary axles which in turn are used to support the wheels of certain large off-the-road vehicles, nor can it be denied that in the manner in which they are used they are describable as parts of machines. Thus, at the very beginning we are faced with a dispute between a classification as a part of a machine and a claim as a cast-iron article. It seems to me that in a clash between these two provisions the provision for parts of machines is manifestly more specific and that in a comparison grounded in relative specificity the description by composition gives way to the description by use or function. Such a result is directly in conformity with the requirements of General Interpretative Rule 10(c) which requires that when an imported article is described in two or more provisions it is classifiable in the provision which most specifically describes it. Such a result is further in conformity with the requirement of General Interpretative Rule 10(ij) which provides that a provision for parts of an article covers products solely or chiefly used as parts of such article and General Interpretative Rule 10(h) which provides that unless the context requires otherwise a tariff description covers articles whether finished or unfinished.

In the face of these overwhelming indications of an intention in the tariff schedules to classify articles in the provision which describes them most specifically even if they are unfinished, it would take circumstances of an extraordinary nature to give priority in this case to a provision for cast-iron articles.

Ordinarily I would go no further and would hold that the question of relative specificity is determinative in this case and that no resort to legislative history is justified since there is no ambiguity in the language of the provisions involved. Nevertheless, despite the plain meaning of these provisions and the ease with which a conflict between them can be resolved by the use of the principle of relative specificity, the court in *John V. Carr & Son, Inc., supra*, 66 Cust. Ct. 316, discerned an intent of Congress to classify cast-iron parts of machines as cast-iron articles. The court evidently found support for this proposition in cases decided under paragraph 327 of the Tariff Act of 1930, notably *United States* v. *The Singer Manufacturing Company*, 37 CCPA 104, C.A.D. 427 (1950), as well as by analogy to the tariff treatment given *forgings* under the tariff schedules as exemplified by *United States* v. *J. Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D. 1013 (1971).

I cannot agree. In my opinion, in order to overcome the plain meaning of the statutory provisions and the inevitable outcome arising from the application of the rule of relative specificity would require legislative history or precedent of a most explicit type. No such legislative history or precedent exists. The decision in the *Singer* case involved language which was dramatically different from that involved herein and provides no support for the proposition that the term cast-iron articles includes articles which are parts of machines. Paragraph 327 of the Tariff Act of 1930, with which the court was concerned in the *Singer* case, provided for "all castings * * * which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles, or parts thereof, or finished machine parts * * *." The essence of the court's opinion is contained in its statement on page 107 that "the provision for excluding 'finished machine parts' convinces us that castings of iron which might be regarded as unfinished machine parts are within the paragraph provided they are not made up into articles or parts thereof." In other words, a provision for advanced castings with the proviso that they not be finished parts leaves open as a logical possibility coverage of advanced castings which are *unfinished* parts. It seems obvious to me that a case which dealt with much broader language than that involved herein, language which lent specific support to the inclusion of unfinished machine parts, can hardly be considered as determining the interpretation of completely new and entirely dissimilar tariff language for cast-iron articles.

I have the same objection to any reasoning by analogy to the case of *United States* v. *J. Gerber & Co., Inc., et al., supra*, 58 CCPA 110. In the *Gerber* case, there was a recognizable continuity between the provision for steel forgings contained in paragraph 319(a) of the Tariff Act of 1930 and the provision for forgings in item 608.25 of the Tariff Schedules of the United States; in fact, the continuity was traced back all the way to the Tariff Act of 1909. The court in the *Gerber* case was able to discern "* * * a policy of Congress, consciously arrived at and clearly stated" to retain unfinished parts in the provision for forgings (page 115). In this case there is no comparable continuity of language and I am unable to discern any policy of Congress to build into the provision for cast-iron articles an exception to the rule of relative specificity and to the rule that a part is classifiable as such whether finished or unfinished.

In fact, what little legislative history there is indicates that major surgery was performed on the provision for castings. First and foremost the language was radically changed from "castings" to cast-iron articles, and nothing remains regarding degree of advancement or

attainment of the status of a finished part. In addition, specific provisions (such as items 660.50, 661.92 and 662.18) were established to deal with certain specific cast-iron parts, a circumstance which is inconsistent with the proposition that item 657.09 for cast-iron articles was intended to have the same sway as paragraph 327 of the Tariff Act of 1930.

It is obvious that a transformation and fragmentation of the tariff concept of castings took place in the formulation of the tariff schedules in that certain specific cast-iron parts were specially provided for and a general provision for cast-iron articles was left to function vis-a-vis other provisions in accordance with the normal rules of relative specificity.

The recent decision in *The Acme Shear Co.* v. *United States*, 73 Cust. Ct., 168 C.D. 4569 (1974), contains in greater detail many of the aspects of the legislative history of item 657.09. Chief Judge Boe rejected a claim for classification of imported cast-iron shear blades as cast-iron articles and held them properly classifiable as unfinished shear blades under item 650.89 of the TSUS. In a decision which rewards close study and which is highly relevant to this case, Chief Judge Boe carefully analyzed item 657.09 and concluded that the intent of Congress was that castings which were parts of articles be classified under the provisions which govern them as parts. Thus, the legislative intent coincides with the plain meaning of the language and the operation of the usual rules of interpretation. The reasoning of the *Acme Shear* case is unassailable in my opinion, and in its light I cannot follow the outcome in *John V. Carr & Son, Inc.* v. *United States, supra*, 66 Cust. Ct. 316.

In conclusion I find that the imported hub castings are properly classifiable as parts of machines pursuant to item 678.50 of the TSUS. Judgment will enter accordingly.

(C.D. 4581)

COATS & CLARK, INC. *v.* UNITED STATES

Die casting machines and parts

CONSTRUCTED VALUE

Plaintiff's proof of constructed value, consisting in large part of a document setting out the elements of value with persuasive supporting material, was sufficient to prove the claimed value. Plaintiff's overall proof was sufficient to preclude any negative inferences arising from the seller and the buyer being related companies. A single inconsistent sale by the exporter to an unrelated purchaser was adequately explained.

Court No. R70/2365

Port of Champlain-Rouses Point

[Judgment for plaintiff.]

(Decided January 21, 1975)

Lane, Young & Fox (*Peter Jay Baskin* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Michael S. O'Rourke*, trial attorney), for the defendant.

WATSON, Judge: The merchandise involved in this case consists of a "Dynacast Model A–2 High Speed Automatic Die Casting Machine" and certain optional parts manufactured in Canada. The principal issue is whether the constructed value of the imported machine is $18,882.00 as found by the appraising official or $12,300.00 as claimed by plaintiff. Other values in dispute are those for a limit switch which was appraised at $115.00 and claimed at $16.58, die casting machine parts appraised at $36.00 and claimed at $5.20, and valves appraised at $101.00 and claimed at $33.75.

Constructed value is defined in section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, as follows:

> (d) Constructed Value.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—
>
> (1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the articles in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;
>
> (2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and
>
> (3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

It is undisputed that Dynacast was the only Canadian producer of merchandise of this class or kind during the relevant period. It is

further undisputed that Dynacast and the importer are related persons within the meaning of section 402(g)(2)(f), in that they are both under common control. After the producer of this merchandise and the plaintiff became corporate relatives in April of 1967 and before the entry of the merchandise in question, it appears there were a number of meetings and communications between the Customs Service and Dynacast as well as the customs broker in an attempt to arrive at a value for such machines and parts. The cost and price information supplied to the Customs Service was rejected. While there is no exact information regarding the reasons for the rejection of the cost information and while there is no specific indication of how the appraised value was arrived at other than that it was done "by all * * * reasonable ways and means," I am not inclined to find the appraised value incorrect as a threshold matter for failure to comply with the statutory requirements. This is so principally because of the existence of a sale on September 29, 1967 by Dynacast to Honeywell, Inc., an unrelated American purchaser at a price of $17,990.00 f.o.b. Montreal. This circumstance, in my opinion, distinguishes the instant situation from those in which the appraising official disregarded the price between related parties solely because they were related as in *Brown, Alcantar & Brown, Inc., et al.* v. *United States*, 68 Cust. Ct. 217, R.D. 11760 (1972), *rev'd*, 69 Cust. Ct. 249, A.R.D. 306, 348 F. Supp. 723 (1972), or ignored proffered cost information without good reason as in *Geigy Chemical Corporation et al.* v. *United States*, 70 Cust. Ct. 259, R.D. 11775, 358 F. Supp. 1275 (1973), *aff'd*, 73 Cust. Ct. 215 A.R.D. 321, 381 F. Supp. 1397 (1974), appeal pending.

I consider this circumstance sufficient to justify disregarding the transaction between parties and resorting to "the best evidence available as to what the amount would have been if the transaction had occurred, between [unrelated] persons * * *" in the language of section 402(g).

Although the appraised value, for the above reason, does not fall because of an inherent flaw in the manner in which it was obtained, I do find ultimately that it was incorrect in light of the proof offered at trial by plaintiff. What may have been the "best evidence available" to the appraising official, such as the sale by Dynacast to Honeywell, Inc. for $17,990.00 and the price at which United States customers could buy the machine involved from plaintiff for $18,782.00, is not persuasive in the face of plaintiff's explanation of the Honeywell sale and the comprehensive proof of constructed value contained in plaintiff's exhibit 3.

Plaintiff's exhibit 3, an impressive document prepared by the secretary-treasurer of Dynacast and its cost accountant, sets out in detail the cost of material used, the cost of fabrication and the cost

of packaging, a clear statement of the general expenses and a creditable calculation of the profit. This exhibit contains supporting documentary evidence in the form of invoices, work timesheets, unit processing cards and accountant worksheets which substantiates the constructed value contained therein. Unlike defendant, I do not expect plaintiff's proof of constructed value to be perfect. I expect proof which is based on a preponderance of the evidence and which, when subjected to reasonable standards of credibility, persuades me that the value claimed by plaintiff is the correct constructed value. In this respect it appears to me that plaintiff's proof is well founded, detailed, properly related to the actual sources of cost information and generally persuasive regarding the veracity of its figures. It constitutes what I consider satisfactory proof in a situation where the exporter is the only producer for export of merchandise of this kind.

As regards cost of materials and the cost allotted to fabrication, I am satisfied that for the most part plaintiff's proof has its basis in the period preceding the date of exportation of this merchandise which would ordinarily have permitted the production of the merchandise in question. I am further convinced that those supporting papers which were somewhat outside this period nevertheless accurately reflect the cost of materials and fabrication of the instant machine.

With respect to plaintiff's proof of general expenses, I am satisfied that the allocation of these expenses among the manufacturer's various product lines accurately represents the general expenses incurred, is in accordance with acceptable accounting procedures and complies with reasonable standards of proof for the sole manufacturer of merchandise of this type.

With regard to the calculation of profit by subtracting the total cost of manufacture from the selling price of $12,355.61 and deriving a profit of $4,244.40, I find this to be a proper ascertainment and proof of the profit element of constructed value. The extent of the profit appears on its face to be a normal and reasonable profit in relation to the costs of materials and general expenses. When plaintiff has proved a profit which is normal by reasonable standards and which is, on its face, realistic, the burden must shift to defendant to disprove the legitimacy and correctness of this profit. I will not infer merely from the relationship existing between the seller and the importer and the profit later made by the importer on resale that the profit proved as an element of constructed value is incorrect. Plaintiff's burden of proof is satisfied when it has proved the statutory elements of constructed value by a preponderance of the credible evidence.

With regard to the single sale between the manufacturer and Honeywell, Inc. at the price of $17,990.00, I am satisfied from the testimony of plaintiff's witnesses that this particular transaction was

an exceptional one and does not represent the ordinary course of trade with regard to the sale of this merchandise. The testimony establishes that the sale in question was an isolated instance occurring shortly after the acquisition of the manufacturer by the common controlling party and was in reality a transaction totally controlled by plaintiff.

In light of the thorough and comprehensive proof regarding the normal course of trade in scores of transactions being a sale from the manufacturer to plaintiff and a resale to the American user, I give no significance to the single sale to Honeywell, Inc.

Taking a more general and overall view of the transaction here involved, I am persuaded that despite the relation between the parties there was no "rigging" or untoward manipulation of the purchase price in derogation of a fair market value. I am favorably impressed by the fact that the price between the parties was very close to the price in effect between them when they were not under common control. In short, the complete proof of constructed value made by plaintiff is far more persuasive than any unsupported inferences drawn solely from the relationship between the buyer and seller. Defendant proved nothing beyond the circumstances which led the appraising official to disregard the originally claimed values. Plaintiff's proof has overcome whatever small justification existed for that action.

For the reasons expressed above, I find that the plaintiff has successfully proved the constructed value it claims for the imported machine. I make the following findings of fact:

1. The merchandise in question consists of a "Dynacast Model A–2 High Speed Die Casting Machine" and parts.

2. The merchandise does not appear on the so-called Final List, T.D. 54521, and there is no dispute that constructed value as defined in section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, is the correct basis of valuation.

3. The appraised values are erroneous.

4. The evidence introduced by plaintiff established the correctness of the elements of the constructed values it claims which values are as follows:

(a) Die Casting Machine	$12,300.00
(b) Limit Switch	16.58
(c) Die Casting Machine Parts	5.20
(d) Valves	33.75

I therefore make the following conclusions of law:

1. Constructed value as defined in section 402(d) of the Tariff Act of 1930, as amended, *supra*, is the correct basis of valuation for this merchandise.

2. Plaintiff has successfully disproved the correctness of the appraised values and successfully proved the values it claims.

3. The correct constructed values of these importations are those set out in finding of fact number 4.

Judgment will be entered accordingly.

(C.D. 4582)

NATIONAL SILVER COMPANY *v.* UNITED STATES

Opinion and Order on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Judgment on the Pleadings

Court No. 67/52855

Port of Los Angeles

[Plaintiff's motion granted.]

(Dated January 29, 1975)

Barnes, Richardson & Colburn (*Peter J. Fitch* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

NEWMAN, Judge: Plaintiff has moved for summary judgment, and defendant has filed a cross-motion for judgment on the pleadings. We are faced with an issue concerning the validity of the rate-quota provisions under which the district director at the port of Los Angeles assessed duty upon certain stainless steel knives and forks imported by plaintiff from Japan in February 1965.

Plaintiff's protest is directed against the assessment of duty under item 927.53 of the Tariff Schedules of the United States (TSUS) at the rate of 3 cents each plus 67.5 per centum ad valorem. It is claimed that the knives and forks in question are properly dutiable under items 650.09 and 650.39, TSUS, at the rate of 1 cent each plus 12.5 per centum ad valorem.

For the reasons indicated hereinafter, plaintiff's motion is granted.

THE FACTS

Admittedly, there is no genuine issue as to any material fact.

On January 10, 1958 and January 31, 1958 the United States Tariff Commission (now United States International Trade Commission) submitted to the President a report on its findings and recommendations in the Commission's "escape-clause" investigation (No. 61) of

stainless steel table flatware, conducted under section 7 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. § 1364 (1958)). The Commission unanimously found and reported that as a result, in part, of concessions granted in the General Agreement on Tariffs and Trade (GATT), stainless steel table flatware classifiable under paragraphs 339 and 355 of the Tariff Act of 1930 were being imported into the United States in such increased quantities, both actual and relative, as to cause serious injury to the domestic industry producing like products. To remedy such injury, three of the commissioners recommended that the GATT concessions be withdrawn on stainless steel table flatware valued under $3 per dozen pieces, and that such flatware be subject to the statutory rates of duty originally established therefor by the Tariff Act of 1930. The other three commissioners recommended that the GATT concessions be withdrawn on the stainless steel table flatware "regardless of value" and be subject to the statutory rates originally established in the Tariff Act of 1930.[1] Thereafter and on July 24, 1959, the Commission submitted a supplemental report to the President. In neither of its reports did the Commission recommend that a rate quota be imposed, nor that the flatware in question be subjected to duty rates 50 percent higher than the original 1930 Tariff Act rates.

On October 20, 1959, however, the President in Proclamation No. 3323, T.D. 54969, announced that he concurred with the Commission's finding of serious injury, and established an annual rate quota beginning November 1, 1959 on imports of table spoons, table knives and table forks, wholly of metal and in chief value of stainless steel, not over 10.2 inches in over-all length and valued under $3 per dozen pieces. Under the proclamation, the duties on imports within the quota, which was fixed at 69 million single units, remained unchanged at the GATT concessions rates. The proclaimed rates applicable to imports in excess of the quota were 50 percent higher than the 1930 statutory rates.

Presidential Proclamation 3548 of August 21, 1963 (28 Fed. Reg. 9279) put the Tariff Schedules of the United States into effect, including the temporary modifications set forth in part 2 of the Appendix to the Tariff Schedules. The quota arrangement imposed by Proclamation 3323 was carried over into the temporary modifications which included, among other things, knives, forks and spoons, valued under 25 cents each, not over 10.2 inches in over-all length, and with stainless steel handles (provided for in items 650.09, 650.11, 650.39, 650.41, etc.). Knives and forks not exceeding 69 million single units entered in any 12-month period beginning November 1 in any year were

[1] See 19 U.S.C. § 1330(d) (1958) respecting "Effect of divided vote in certain cases", and the discussion in footnote 7.

covered under items 927.50 and 927.51, set forth in said part 2. Over-quota imports of such knives and forks were covered under item 927.53, set forth in said part 2, and were to be assessed with duty at the rate of 3 cents each plus 67.5 per centum ad valorem.

The imported knives are of the type provided for by item 650.09, TSUS; and the imported forks are of the type provided for by item 650.39, TSUS. Such knives and forks were imported in excess of the quota provided for in item 927.53, TSUS, and hence were assessed with duty at the rate of 3 cents each plus 67.5 per centum ad valorem under that provision.

Contentions of the Parties

Citing *United States* v. *Schmidt Pritchard & Co. et al.*, 47 CCPA 152, C.A.D. 750 (1960), *cert. denied*, 364 U.S. 919 (1960), plaintiff contends that Proclamation 3323 is void since it established escape-clause remedies other than those recommended by the Tariff Commission, in violation of section 7(c) of the Trade Agreements Extension Act of 1951, as amended.

Additionally, plaintiff insists that the 1958 amendments to the Trade Agreements Extension Act of 1951 did not change the President's authority under section 7(c), but simply gave Congress authority to act if the President saw fit not to do so.

Finally, plaintiff argues that "[i]tems 927.50 through 927.54 of TSUS are the embodiment and implementation of Proclamation 3323 in the transition from the schedules of the Tariff Act of 1930 to the Tariff Schedules of the United States. If Proclamation 3323 is illegal, null and void, then said items 927.50 through 927.54, being based upon a void proclamation, are similarly void". Thus, plaintiff claims that the imported knives are properly dutiable at the rate of 1 cent each plus 12.5 per centum ad valorem under item 650.09, TSUS; and that the forks are properly dutiable at the rate of 1 cent each plus 12.5 per centum ad valorem under item 650.39, TSUS.

Defendant contends that *Schmidt Pritchard* is not applicable to section 7(c) of the Trade Agreements Extension Act of 1951, as amended by section 6 of the 1958 Act, since, it is argued, the 1958 Act did not require the President merely to accept or reject a Tariff Commission recommendation, but permitted him to approve such recommendation "in part". Further, defendant asserts: "Congress's failure to take action pursuant to section 7(c)(2)(B) of said Act is tantamount to Congress's acquiescence in, and ratification of, the President's action".

Finally, in support of the assessment herein, defendant argues that items 927.50 through 927.54, TSUS, were the result of a statutory scheme initiated by Congress with the Customs Simplification Act

of 1954, 68 Stat. 1136, as amended, and culminating with Presidential Proclamation No. 3548, whereby all permanent and temporary tariff provisions were transferred into the Tariff Schedules of the United States; and that "[a]ny defect, either arising out of Presidential Proclamation No. 3323, or out of the Tariff Commission's actions in transferring over to the Tariff Schedules, was remedied by the Tariff Classification Act of 1962, 76 Stat. 72, which mandated the President to publish and proclaim the Tariff Schedules, including the temporary modifications contained therein".

STATUTES

The so-called "escape-clause" provisions, section 7 of the Trade Agreements Extension Act of 1951, 65 Stat. 74, so far as pertinent, read:

SEC. 7.(a) * * *

* * * * * * *

Should the Tariff Commission find, as a result of its investigation and hearings, that a product on which a concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products, *it shall recommend to the President the withdrawal or modification of the concession, its suspension in whole or in part, or the establishment of import quotas*, to the extent and for the time necessary to prevent or remedy such injury. * * * [Emphasis added.]

* * * * * * *

(c) Upon receipt of the Tariff Commission's report of its investigation and hearings, *the President may make such adjustments in the rates of duty, impose such quotas, or make such other modifications as are found and reported by the Commission* to be necessary to prevent or remedy serious injury to the respective domestic industry. If the President does not take such action within sixty days he shall immediately submit a report to the Committee on Ways and Means of the House and to the Committee on Finance of the Senate stating why he has not made such adjustments or modifications, or imposed such quotas. [Emphasis added.]

Section 6 of the Trade Agreements Extension Act of 1958, 72 Stat. 676, provides:

SEC. 6. Subsection (c) of section 7 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C., sec. 1364(c)), is amended by inserting "(1)" after "(c)" at the beginning thereof, and by adding at the end thereof the following:

(2) The action so found and reported by the Commission to be necessary shall take effect (as provided in the first sentence of paragraph (1) or in paragraph (3), as the case may be)—

(A) if approved by the President, or

(B) if disapproved by the President in whole or in part, upon the adoption by both Houses of the Congress (within the 60-day period following the date on which the report referred to in the second sentence of paragraph (1) is submitted to such committees), by the yeas and nays by a two-thirds vote of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the action so found and reported by the Commission to be necessary.

For the purposes of subparagraph (B), in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) take such action as may be necessary to make the adjustments, impose the quotas, or make such other modifications as were found and reported by the Commission to be necessary.

Sections 101, 102 and 103 of the Tariff Classification Act of 1962, Public Law 87–456, 76 Stat. 72, *et seq.*, as amended by the Trade Expansion Act of 1962, Public Law 87–794, 76 Stat. 872, provide:

TITLE I—ADOPTION OF REVISED TARIFF SCHEDULES

SEC. 101. (a) The Tariff Act of 1930, as amended, is amended by striking out titles I and II (19 U.S.C. 1001 and 1201) and, subject to subsection (b) of this section and to sections 102 and 103 of this Act, by substituting in lieu thereof a new title I entitled "Title I—Tariff Schedules of the United States".

(b) Such new title I (hereinafter in this Act referred to as the "Tariff Schedules of the United States") shall consist of—

(1) the general headnotes and rules of interpretation;
(2) schedules 1 to 8, inclusive; and
(3) the appendix to the tariff schedules;

all as set forth in the report of the United States Tariff Commission (hereinafter in this Act referred to as the "Commission") entitled "Tariff Classification Study, Proposed Revised Tariff Schedules of the United States", dated November 15, 1960, as changed by the "First Supplemental Report" (January, 1962); and

(4) subject to subsection (c), such changes in the provisions identified in paragraphs (1), (2), and (3) of this subsection as the Commission decides—

(A) are necessary to reflect changes in tariff treatment made by statute or under authority of law, arising either before the date of the enactment of this Act [May 24, 1962]

or on or after such date of enactment and before the date on which the Tariff Schedules of the United States is published pursuant to subsection (d), or

(B) are otherwise necessary.

* * * * * * *

SEC. 102. At the earliest practicable date, the President shall take such action as he deems necessary to bring the United States schedules annexed to foreign trade agreements into conformity with the Tariff Schedules of the United States and, after such action is completed, the President shall proclaim—

(1) the rates of duty in rate column numbered 1 and the other provisions of the Tariff Schedules of the United States, which are required or appropriate to carry out the foreign trade agreements to which the United States is a contracting party;

(2) the temporary modifications set forth in part 2 of the appendix to the tariff schedules (that is, those modifications proclaimed pursuant to the provisions of section 7 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1364), and of other trade-agreements legislation);

(3) the additional import restrictions set forth in part 3 of the appendix to the tariff schedules (that is, those restrictions proclaimed pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624)); and

(4) the nations or areas and countries set forth in general headnote 3(d) of the Tariff Schedules of the United States * * *.

SEC. 103. The provisions of the Tariff Schedules of the United States as made effective on the date provided by section 501 shall have the status of statutory provisions duly enacted by the Congress, except for—

(1) the rates of duty in rate column numbered 1 of the tariff schedules proclaimed pursuant to paragraph (1) of section 102 which are lower than the rates of duty in rate column numbered 2 of such schedules for the corresponding items; and

(2) the provisions proclaimed by the President pursuant to paragraphs (2), (3), and (4) of section 102.

The applicable provisions of the Tariff Schedules of the United States are:

SCHEDULE 6. – METALS AND METAL PRODUCTS

* * * * * * *

PART 3. – METAL PRODUCTS

* * * * * * *

Subpart E. – Tools, Cutlery, Forks and Spoons

* * * * * * *

Knives not specifically provided for elsewhere in this subpart, and cleavers, with or without their handles:

* * * * * * *

Knives with their handles:

* * * * * * *

With stainless steel handles:

650.09	With handles not containing nickel and not containing over 10 percent by weight of manganese..	1¢ each + 12.5% ad val.

* * * * * * *

Forks, spoons, and ladles, all the foregoing which are kitchen or table ware, with or without their handles:

Forks:

* * * * * * *

With their handles:

* * * * * * *

With stainless steel handles:

650.39	With handles not containing nickel and not containing over 10 percent by weight of manganese.....	1¢ each + 12.5% ad val.

* * * * * * *

APPENDIX TO THE TARIFF SCHEDULES

* * * * * * *

PART 2. – TEMPORARY MODIFICATIONS PROCLAIMED PURSUANT TO TRADE-AGREEMENTS LEGISLATION

* * * * * * *

Subpart A. – Escape-Clause Actions

Subpart A headnotes:

1. This subpart contains the temporary modifications of the provisions of the tariff schedules proclaimed by the President pursuant to the escape-clause procedures prescribed in section 7 of the Trade Agreements Extension Act of 1951, as amended, or in sections 301 and 351 or 352 of the Trade Expansion Act of 1962.

* * * * * * *

Knives, forks, and spoons, all the foregoing valued under 25 cents each, not over 10.2 inches in over-all length, and with stainless steel handles (provided for in items 650.09, 650.11, 650.39, 650.41, and 650.55 of part 3E of schedule 6, or if included in sets provided for in item 651.75 of such part):

For an aggregate quantity not to exceed 69 million single units entered in any 12-month period beginning November 1 in any year from countries subject to the rates set forth in rate of duty column numbered 1:

* * * * * * *

	Other:	
927.53	Knives and forks (items 650.09, 650.11, 650.39, and 650.41).....	3¢ each+67.5% ad val.

PRESIDENTIAL PROCLAMATION 3323 (T.D. 54969)

The proclamation, in pertinent part, provides:

1. WHEREAS, pursuant to the authority vested in him by the Constitution and the statutes, including section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), on October 30, 1947, the President entered into a trade agreement with certain foreign countries, which trade agreement consists of the General Agreement on Tariffs and Trade * * *

* * * * * * *

7. WHEREAS the United States Tariff Commission on January 10, 1958 and January 31, 1958 submitted to me a report (which report the Commission on July 24, 1959 supplemented in accordance with my request) of its investigation No. 61 under section 7 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1364), on the basis of which investigation, and a hearing held in connection therewith, the Commission has found that, as a result in part of the duties reflecting the concessions granted thereon in the said General Agreement, as supplemented, the products referred to in the fourth recital of this proclamation (hereinafter sometimes referred to as "stainless steel table flatware") were being imported into the United States in such increased quantities, both actual and relative, as to cause serious injury to the domestic industry producing like products;

8. WHEREAS I find that in order to remedy the serious injury to the domestic industry it is necessary that there be applied to stainless steel table flatware not over 10.2 inches in over-all length and valued under $3 per dozen pieces the customs treatment hereinafter proclaimed;

9. WHEREAS section 350 of the Tariff Act of 1930, as amended, authorizes the President to proclaim such modifications of existing duties and such additional import restrictions as are required or appropriate to carry out any foreign trade agreement that the President has entered into under such section 350; and

10. WHEREAS, upon modification of the concessions as hereinafter proclaimed, it will be appropriate, to carry out the said General Agreement, to apply to the stainless steel table flatware not over 10.2 inches in over-all length and valued under $3 per dozen pieces the customs treatment hereinafter proclaimed:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under the authority vested in me by section 350 of the Tariff Act of 1930, as amended, and by section 7(c) of the Trade Agreements Extension Act of 1951, as amended, and in accordance with the provisions of Article XIX of the said General Agreement, do proclaim that, effective November 1, 1959, and until the President otherwise proclaims—

(a) the said prevailing tariff concessions granted in the said General Agreement, as supplemented, are hereby modified by adding the following proviso at the end of item 339 in Part I of Schedule XX–1956:

"*Provided*, That after there has been entered, in any 12-month period beginning November 1, in 1959 and in each subsequent year, a total aggregate quantity of 69 million single units of table spoons wholly of metal and in chief value of stainless steel, not over 10.2 inches in over-all length and valued under $3 per dozen pieces included in this item 339, and of table knives and table forks of like composition, length, and value, included in item 355 of Schedule XX annexed to the Torquay Protocol to the General Agreement on Tariffs and Trade, the rates on the products described above in this proviso, entered during the remainder of such 12-month period, shall be as follows:"

* * * * * * *

Validity of Proclamation 3323 Under the Trade Agreements Extension Act of 1951, as Amended

It is fundamental that Congress is vested by the Constitution with authority to levy duties on imported goods. And it is also well settled that Congress may endow the President with power to raise or lower rates of duty provided he acts within the procedures authorized by Congress. *J. W. Hampton, Jr., & Company* v. *United States*, 276 U.S. 394 (1928); *United States* v. *George S. Bush & Co., Inc.*, 310 U.S. 371 (1940). I agree with plaintiff's contention that Proclamation 3323 is void since the President failed to follow the procedures authorized by Congress for escape-clause [2] action pursuant to section 7(c) of the Trade Agreements Extension Act of 1951, as amended.

Under section 7(a) of the 1951 Act, as amended, the Tariff Commission after a determination of injury must recommend to the President respecting a concession previously granted: "the withdrawal or modification of the concession, its suspension in whole or in part, or *the establishment of import quotas*". [Emphasis added.] Under section 7(c) "the President may make such adjustments in the rates of duty, *impose such quotas*, or make such other modifications *as are found and reported by the Commission to be necessary* to prevent or remedy serious injury to the respective domestic industry". [Emphasis added.] Accordingly, under section 7 "the establishment of import quotas" is one of the escape-clause remedies the Tariff Commission is expressly authorized to recommend to the President;

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[2] "The 'escape-clause' is a clause inserted in trade agreements allowing parties to the agreement to escape from terms of the agreement which cause or threaten serious injury to domestic industry, which effect was unforeseen at the time of the agreement. The statutory procedure may be applied only in cases where the involved trade agreement contains such an 'escape-clause.' In this case the escape-clause involved is that in GATT. 61 Stat. (Part 5) A 59". *United States* v. *Schmidt Pritchard & Co. et al.*, 47 CCPA 152, 159, C.A.D 750 (1960), *cert. denied*, 364 U.S. 919 (1960).

and the quota is an escape-clause remedy the President is expressly authorized to impose, provided that such action was "found and reported by the Commission to be necessary".

In short, by Proclamation 3323 the President totally rejected the Commission's recommendation to withdraw GATT concessions and restore the original statutory rates under the Tariff Act of 1930. Acting entirely on his own initiative, the President imposed a rate quota permitting importations of quota-type flatware at the *concession rates* prior to filling the quota, and subsequently at rates *50 percent higher than the 1930 rates*. Plaintiff argues that under these circumstances, Proclamation 3323 is illegal, null and void, citing the significant holding in *United States* v. *Schmidt Pritchard & Co. et al.*, *supra* as dispositive of the issue herein involved.

In *Schmidt Pritchard*, it appears that in the course of an escape-clause proceeding under section 7, the President accepted the majority finding of the Tariff Commission respecting the existence of injury to the domestic bicycle industry as a result, in part, of the duties reflecting concessions granted in the General Agreement on Tariffs and Trade, and that increases in rates of duty were necessary to remedy such injury. However, the President rejected the finding and recommendation respecting the amount of increase in duty necessary to remedy the injury, and thereupon proclaimed other rates of duty in Proclamation 3108. The appellee-importer contended, *inter alia*, that section 7(c) limited the President's discretion in action upon the Tariff Commission's report to acceptance or rejection of the remedies recommended by it and, therefore, Proclamation 3108 was invalid.

The Court of Customs and Patent Appeals determined that insofar as Proclamation 3108 set a rate of duty on one class of bicycles different from that recommended by the Tariff Commission, the President exceeded his authority under the escape-clause procedures of section 7 of the 1951 Act, as amended, and consequently that portion of the proclamation was held void. In this connection, our appellate court commented (47 CCPA at 159–160):

> Appellee contended and the Customs Court found that the proclamation with respect to the large wheel lightweight bicycles were outside the authorization given by the statute in that it proclaimed an adjustment in the rate of duty other than that recommended by the Tariff Commission. The specific language of the statute pertinent to this issue is, "the President may make *such adjustments in rates of duty*, * * * as *are found and reported by the Commission* to be necessary to prevent or remedy serious injury * * *." [Emphasis added.] The clear import of this language is that the President *may* proclaim adjustments in rate of duty, but he need not do so. The alternative of disregarding the recommendation and making no changes in existing

> rates is open to the President. However, if the President decides to make an adjustment in rate of duty, he must proclaim the change which is recommended to him by the Tariff Commission.
>
> Appellant correctly emphasizes that section 7 of the Trade Agreements Extension Act of 1951 is primarily a procedural statute. This statute, commonly referred to as the "escape-clause" provision, defines the manner in which the President must exercise existing powers.
>
> Congress has fixed in section 7 of the Trade Agreements Extension Act of 1951 the limits on the Presidential exercise of the therein delegated powers. He is authorized only to accept or reject the recommendations of the Tariff Commission made pursuant to this section. Were it otherwise, the procedures set up in section 7 would be meaningless. For this reason, we do not agree with the position of counsel for appellant that Congress, in addition, intended that the President should have greater discretion and authority under other statutes to achieve the same objectives. Be that as it may, we know of no other statutory provisions by which the President may effect "escape-clause" adjustments and counsel have cited none. [Footnote references omitted.]

The present case is identical to the situation in *Schmidt Pritchard* insofar as the President imposed an escape-clause remedy other than that recommended by the Tariff Commission. Accordingly, Proclamation 3323 exceeded the President's authority under section 7(c) of the 1951 Act, thus rendering such proclamation *ultra vires* and void.

Validity of Proclamation 3323 Under the Trade Agreements Extension Act of 1958

Defendant argues that in *Schmidt Pritchard* the appellate court construed section 7(c) of the Trade Agreements Extension Act of 1951, as amended by the 1953 and 1955 Acts, while Proclamation 3323 was issued after the enactment of the Trade Agreements Extension Act of 1958.[3]

Relying heavily upon the newly added subsection 7(c)(2)(B) and focusing upon the phrase therein "in whole or in part", defendant argues that "the 1958 Act effected a change from the prior limitation on Presidential action which the *Schmidt Pritchard* court had found included in the 1951, 1953, and 1955 Acts". In short, defendant tacitly admits that in Proclamation 3323 the President exceeded his authority under section 7(c) of the 1951 Act, as amended in 1953

[3] The 1951 Act, as amended in 1953 and 1955, was in effect at the time the Tariff Commission made its Investigation No. 61 and issued its report on January 10, 1958 and January 31, 1958. The 1958 Act, enacted on August 20, 1958, was in effect on the dates of the Commission's supplemental report of July 24, 1959 and Proclamation 3323.

and 1955, but urges that the President's action was authorized under section 7(c)(2)(B) of the 1951 Act, as amended by the 1958 Act. In essence, defendant's position is that under the 1958 amendment the President had authority to disapprove the recommendations of the Commission "in part", and implement his own escape-clause remedy.

Defendant's contention is entirely without merit for these reasons:

First, I find that there was no disapproval "in part" of the Commission's recommendations. In its reports on investigation No. 61, there were only two recommendations of the commissioners. An examination of these reports discloses that three commissioners recommended the total withdrawal of concessions on flatware valued under $3 per dozen pieces, whereas the other three commissioners recommended the total withdrawal of concessions "regardless of value".[4] Disregarding the difference between the two recommendations predicated upon value, there was in substance only one recommendation of the Commission—the total withdrawal of the concessions granted in GATT. However, contrary to the Commission's recommendation to withdraw the GATT concessions, the Presidential proclamation imposed a rate quota permitting up to 69 million pieces of the described flatware to be imported each year (commencing November 1, 1959) at the GATT concessions rates. Moreover, on over-quota importations, such as those involved in this case, the proclamation imposed a duty 50 percent higher than the original 1930 statutory rates the Commission had recommended. Plainly, then, the President's escape-clause remedies bore no relationship whatsoever to the recommendations "found and reported by the Commission to be necessary", and in effect constituted a *total rejection* of the Commission's recommendations.

Notwithstanding that the President did not take the action recommended by the Commission, his identical letters to the chairmen of the House Ways and Means Committee and the Senate Finance Committee advising them of his imposition of a rate quota made no reference to the action recommended by the Commission to be necessary (viz., withdrawal of GATT concessions); nor did the President's letters state any reasons why he did not take the action recommended by the Commission, as required by section 7(c)(1).[5] In brief, the letters to the Congressional committees gave Congress no indication of any disapproval, in whole or in part, by the President of the Commission's recommendations in its investigation No. 61.

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[4] See footnote 1.

[5] Section 7(c)(1) provides in relevant part: "* * * If the President does not take such action [as was recommended by the Tariff Commission] within sixty days *he shall immediately submit a report* to the Committee on Ways and Means of the House and to the Committee on Finance of the Senate *stating why he has not made such adjustments or modifications*, or imposed such quotas". [Emphasis added.

Secondly, even assuming *arguendo* that, as defendant urges, there was a disapproval "in part" of the Commission's recommendations, section 7(c)(2)(B) must be read in *pari materia* with section 7(c)(1) and should not be construed so as to nullify the manifest Congressional intent to limit the President's discretion to "impose such quotas * * * *as are found and reported by the Commission to be necessary*". It may be emphasized that the 1958 Act retained the identical language of section 7(c) of the 1951 Act, as amended in 1953 and 1955, which significantly, was construed in *Schmidt Pritchard* to limit the President's discretion to either accept or reject the Commission's recommendations.[6] The 1958 Act merely redesignated section 7(c) of the 1951 Act, as amended in 1953 and 1955, as section 7(c)(1), and added a new subsection 7(c)(2), providing *inter alia* that whenever the President disapproved of the Tariff Commission's escape-clause recommendations (in whole or in part), the Commission's recommendations would still be adopted if Congress approved by a two-thirds vote of each House a concurrent resolution to that effect.

The Report of the House Committee on Ways and Means explaining the bill that later became the 1958 Act (H.R. Rep. No. 1761, 85th Cong., 2d Sess. (1958)) indicates that under section 7(c)(2), whether it is the President (by proclamation) or the Congress (by the concurrent resolution procedure) which invokes escape-clause action after a Tariff Commission's finding of injury, it is only "the action so found and reported by the Commission to be necessary" that may take effect. Thus, the report states (p. 2):

> *A. Principal features of H.R. 12591*
>
> * * * * * * *
>
> 3. The escape-clause procedure is retained and will be applicable to new as well as old concessions, with the following modifications in the procedure:
>
> * * * * * * *
>
> (*f*) When the President disapproves in whole or in part a Tariff Commission recommendation in an escape-clause case, the committee bill provides that effect shall be given to *any part of the recommendations which has not been made effective*, if there is approved, within 60 days of the submission of the report of the President's disapproving action, a concurrent resolution by a two-thirds vote of both Houses of the Congress. * * * [Emphasis added.]

And at page 10:

> CONCURRENT RESOLUTION IN ESCAPE-CLAUSE CASES
>
> Under existing law, upon receipt of the Tariff Commission's report of its investigation and hearings in escape-clause cases, the

[6] Indeed, in *Schmidt Pritchard*, the appellate court focused particularly upon the language of section 7(c) of the 1951 Act, as amended, "such adjustments in the rates of duty, * * * as are found and reported by the Commission".

President may make such adjustments of duty, impose such quotas, or make such other modifications as are found and reported to be necessary to prevent or remedy serious injury to the domestic industry. If he does not take such action within 60 days he must report to the Committee on Ways and Means of the House and to the Committee on Finance of the Senate why he has not done so. While the Congress has the power to pass a bill which would have the effect of reversing the President's action where he disapproves a Tariff Commission recommendation, and to override a veto of such a bill if it is disapproved by the President, no such action has ever been taken since the escape-clause provision was first enacted in 1951.

Your committee has adopted two important amendments, contained in sections 6 and 7 of the bill, to the escape-clause procedure.

Section 6 provides that *the action found and reported by the Tariff Commission to be necessary* to remedy serious injury shall take effect, if disapproved by the President in whole or in part, in the event that, within the 60-day period following the President's report stating why he has not taken the action, the Congress, by a two-thirds vote of each House, adopts a concurrent resolution stating in effect that it approves the action found and reported by the Tariff Commission to be necessary. If the Congress adopts such a resolution, the President shall, within 15 days thereafter, take such action as may be necessary to make the adjustments, impose the quotas, or make such other modifications *as were found and reported by the Commission to be necessary* to prevent or remedy serious injury. This will enable the President to take the necessary action internationally under United States trade agreements. [Emphasis added.]

While there can be no doubt from the legislative history of the 1958 Act that Congress intended "that the President should have discretion to consider whether in his opinion the recommendations [of the Tariff Commission] are soundly based and to take into consideration other matters, such as the effect of the proposed action on foreign relations",[7] yet there is not even a glimmer of a suggestion that by using the words "in whole or in part" Congress intended thereby to expand the President's authority in escape-clause actions by giving him carte blanche to digress from the action recommended by the Tariff Commission.

From a study of the legislative history of the 1958 Act, I have concluded that the newly added concurrent resolution procedure in subsection 7(c)(2)(B) was intended only to provide Congress with an expeditious means of overriding a Presidential disapproval (in whole

[7] H.R. Rep. No. 1761, 85th Cong., 2d Sess., p. 8 (1958). Thus, pursuant to 19 U.S.C. § 1330(d) (effect of divided vote of Tariff Commission) the President had discretion to follow one of three courses of action: (1) withdraw concessions as to flatware valued under $3 per dozen pieces, as three of the commissioners recommended; or (2) withdraw concessions on the flatware regardless of value, as the other three commissioners recommended; or (3) disapprove the commissioners' recommendation to withdraw the GATT concessions.

or in part) of the Tariff Commission's recommendations in an escape clause proceeding. Presumably, if Congress wished to invoke an escape-clause remedy *not recommended by the Commission*, it would, as before the 1958 Act, be required to enact a bill in the usual manner. Inasmuch as the legislative history of the 1958 Act establishes that by the concurrent resolution procedure Congress intended to simplify the legislative process by which it could implement the Commission's recommendations, I can perceive of no reason why it would have intended to confine itself to a narrower scope of action than was open to the President. On the contrary, it is my considered view that Congress never intended that the President should act outside of the remedies recommended by the Commission; and that by adding subsection 7(c)(2)(B) Congress intended to give itself the same scope of action which it believed that it had given the President under section 7(c)(1).

In sum, then, the reference in the new subsection to disapproval "in whole or in part" plainly did not remove the limitation on the President's authority in section 7(c)(1) to approve or disapprove the recommendations of the Commission, as construed by our appellate court in *Schmidt Pritchard*.

Continuing, defendant also argues that: "Congressional failure to proceed under the new procedure, i.e., section 7(c)(2)(B), *supra*, amounts to a Congressional acquiescence in, and ratification of, the President's partial disapproval of the Tariff Commission's recommendation as promulgated in Proclamation No. 3323". In this connection, it must be observed that prior to enactment of the concurrent resolution procedure in section 7(c)(2)(B), Congress could, by enactment of a bill following the President's notification to the Congress of his disapproval of a Tariff Commission recommendation, override the President's action. Hence, while simplifying the procedure by which Congress might implement a recommendation of the Commission rejected by the President, the 1958 Act did not newly create authority to override the President's disapproval. However, as pointed out in H.R. Rep. No. 1761, at page 10, Congress had never reversed by legislation a Presidential disapproval of a Commission recommendation. Consequently, could it not be said that by failing to enact bills overriding the President's illegal action on spring clothespins in Proclamation 3211, 92 Treas. Dec. 322, T.D. 54493 (subsequently held invalid in *Falcon Sales Company et al.* v. *United States*, 47 Cust. Ct. 129, C.D. 2292 (1961)) or his *ultra vires* action on bicycles in Proclamation 3108, 90 Treas. Dec. 285, T.D. 53883 (subsequently declared invalid in *Schmidt Pritchard*), Congress had thus ratified the President's action? I think not. It is stressed that Congress had the power through enactment of legislation to nullify the President's unau-

thorized digressions from the recommendations of the Tariff Commission in both Proclamations 3108 and 3211, but it failed to do so. Yet, in neither *Falcon Sales* nor in *Schmidt Pritchard* did the courts hold that Congress' failure to act constituted a ratification of the President's invalid action!

While Congressional inaction following submission of a report of Presidential disapproval (in whole or in part) of the Commission's recommendations[8] would plainly indicate Congress' concurrence with the President in such *disapproval*, mere inaction, however, will not be further construed as a Congressional ratification of or acquiescence in Presidential escape-clause action taken contrary to the procedures established by Congress in section 7. In light of the extremely serious nature of escapes from international obligations,[9] and the complex procedures adopted by Congress for escape-clause actions, mere Congressional inaction under section 7(c)(2)(B) will not lightly be inferred as a ratification of or acquiescence in unauthorized Presidential action. This is especially true where, as here, the President's report to the appropriate Congressional committees failed to state the fact of and the reasons for disapproving the action recommended by the Commission. Therefore, I see no merit in defendant's contention that by inaction Congress has approved the rate-quota arrangement provided in Proclamation 3323.

While not articulated as such, defendant also relies upon the doctrine of legislative ratification of executive (or administrative) interpretation. See e.g., *Schmidt Pritchard, supra;* and *Greene Cattle Company, Inc.* v. *United States*, 36 CCPA 52, C.A.D. 397 (1949). Hence, defendant contends that when Congress enacted the 1958 Act, it had knowledge of the President's interpretation of his authority under section 7 of prior acts (viz., 1951, 1953, 1955) in certain pre-1958 escape-clause proclamations, and therefore Congress must be deemed to have ratified such interpretation by passage of the 1958 Act.

Strongly militating against the application of the ratification doctrine in this case is the legislative history of the escape-clause procedure as summarized in *Schmidt Pritchard* (47 CCPA at 161–162):

> Prior to enactment of the first "escape-clause" procedure in the Trade Agreements Extension Act of 1951, 65 Stat. 72, the procedure for invoking the escape-clause was set forth in Executive Order No. 9832, 12 Fed. Reg. 1363. The Executive Order

[8] As noted *supra*, the President's letters to the Congressional committees gave Congress no indication of any disapproval of the Commission's recommendations in its investigation No. 61, as required by section 7(c)(1).

[9] "* * * [I]t is the opinion of your committee [House Ways and Means] that escape actions should not be lightly undertaken, involving as they do not only the interests of American businessmen and consumers, and of other American producers who may lose the benefit of the compensatory concessions which were reciprocally granted to the United States by foreign countries, but also the foreign relations of the United States to a serious degree". H. R. Rep. No. 1761, 85th Cong., 2d Sess. (1958), p. 12.

> procedure made the recommendations of the Tariff Commission subjects for the President's consideration but the ultimate action was left entirely to the discretion of the President. *However, Congress found that procedure to be unfair, ineffective, and unworkable.* Two amendments were introduced in the House, one by Mr. Curtis, which would have enacted the existing procedure, and one by Mr. Bailey, which made the recommendations of the Tariff Commission binding upon the President. Mr. Curtis' amendment was rejected, and Mr. Bailey's amendment was passed by the House.
>
> The Senate Finance Committee redrafted the "escape-clause" procedure into substantially its present form. This form of procedure was a compromise, in that it did not bind the President to proclaim every recommendation. However, it did not give the President discretion to proclaim any other modification. With some amendments not pertinent here, the Senate Finance Committee amendment was reported out of Conference Committee and passed by Congress.
>
> In the Trade Agreement Extension Acts of 1953 and 1955 substantially the same language is found. In each of those years, however, Congress again rejected amendments which would have made the recommendations of the Tariff Commission binding upon the President, *and also rejected amendments which would have left the President the same discretion as he had prior to 1951.* [Footnote references omitted; emphasis added.]

In the foregoing summary of the legislative history of the 1951, 1953 and 1955 Acts, it is important to note that Congress considered granting the President the broad authority he had possessed prior to 1951, but repeatedly rejected granting the President such authority. Thus, it would be entirely unrealistic to presume that in enacting the 1958 Act, Congress intended, in effect, to revive the "Executive Order procedure" which it had theretofore found "to be unfair, ineffective, and unworkable".

Additionally, with respect to the pre-1958 escape-clause proclamations it is not clear whether, or to what extent, any Presidential interpretation of *section 7* was involved in deviating from the Commission's recommendations. For example, respecting the spring clothespin proclamation involved in *Falcon Sales*, defendant there argued that by substituting a duty increase for the absolute quota recommended by the Commission, the President must be presumed to have acted pursuant to his authority under section 350(a)(5) of the Tariff Act of 1930, as amended, rather than his authority under section 7. Again, in *Schmidt Pritchard*, the defendant urged that in proclaiming a different rate of duty on bicycles than was recommended by the Commission, the President could have invoked section 350(a).

In a word, while the 1958 Act obviously authorized the President to partially disapprove the recommendations of the Tariff Commission,

the Act did not give him authority to go further and impose his own escape-clause remedies.

Validity of Items 927.50 Through 927.54, TSUS

The Government insists that whether or not Presidential Proclamation 3323 is valid, items 927.50 through 927.54 were the result of a statutory scheme which produced the tariff schedules and therefore have been ratified by Congress. Defendant argues that: "[S]ince Congress is the one which establishes the escape-clause procedures to be followed by the President, it can ratify a Presidential action which fails to comply with such procedures. Where Congress mandates the President to proclaim the tariff schedules, including items 927.50 through 927.54, such ratification is implied. Moreover, escape-clause procedures merely define the manner in which the President to whom Congress has delegated certain powers must exercise them. Such procedures, therefore, need not be followed where Congress itself exercises the powers".

The Government further urges: "Congress must, therefore, be deemed to have known and considered the provisions of the [*Tariff Classification*] *Study* and to have adopted them in their entirety, thus ratifying any defects originally existing in the 'temporary modifications' contained in Part 2 of Schedule 9 [sic], found in the Appendix (*i.e.* Presidential Proclamation No. 3323), as well as any changes made in such modifications by the Tariff Commission".

True it is the Tariff Commission made a full and complete study of all the provisions of the United States customs laws and related special provisions pursuant to the Customs Simplification Act of 1954, as amended, and Congress had before it the *Tariff Classification Study* from November 15, 1960 until May 14, 1962, when it passed the Tariff Classification Act of 1962. Moreover, it is undisputed that the procedures specified in the Tariff Classification Act of 1962 for the promulgation of the tariff schedules by the President were fully complied with, and that Proclamation 3548, effectuating the tariff schedules on and after August 31, 1963, is valid. Nonetheless, I am clear that in promulgating the tariff schedules the Congress did not intend to ratify any invalid escape-clause actions incorporated into the appendix or otherwise intend to exercise escape-clause powers.

First, neither the Customs Simplification Act of 1954, as amended, nor the Tariff Classification Act of 1962, pursuant to which Presidential Proclamation No. 3548 was proclaimed, contained escape-clause procedures or authority. Presidential Proclamation 3548 does not purport to be based upon any investigations or hearings for escape-

clause purposes, nor does it purport to be authorized by section 7 of the Trade Agreements Extension Act of 1951, as amended.

Second, pursuant to sections 102 and 103 of the Tariff Classification Act of 1962 "those modifications proclaimed pursuant to the provisions of section 7 of the Trade Agreements Extension Act of 1951, as amended" (escape-clause actions), were expressly excepted from the "status of statutory provisions duly enacted by Congress". Hence, item 927.53, TSUS, was not accorded statutory effect, and is merely "the embodiment and implementation of proclamation 3323 in the transition from the schedules of the Tariff Act of 1930 to the Tariff Schedules of the United States". *Charberjoy Distributors, Inc.* v. *United States*, 65 Cust. Ct. 459, 462, C.D. 4123 (1970), *aff'd*, *United States* v. *Charberjoy Distributors, Inc.*, 59 CCPA 207, C.A.D. 1068, 465 F. 2d 922 (1972). In its *Tariff Classification Study*, the Tariff Commission informed Congress of the proposed Appendix to the Tariff Schedules, Part 2 (*Schedule 8.—Special Classifications Provisions Appendix to the Tariff Schedules*, 1960, pp. 114–115):

APPENDIX TO THE TARIFF SCHEDULES, PART 2—
TEMPORARY MODIFICATIONS PROCLAIMED PURSUANT
TO TRADE-AGREEMENTS LEGISLATION

Explanatory Notes

This part relates to temporary modifications of the basic schedules proclaimed by the President pursuant to trade-agreements legislation.

Subpart A – Escape-Clause Actions

Subpart A embraces modifications proclaimed pursuant to the escape-clause procedures prescribed in section 7 of the Trade Agreements Extention Act of 1951, as amended. The modifying provisions impose on certain articles increased import restrictions, in the form of higher rates of duty or of quantitative limitations (quotas).

The provisions incorporated in this subpart do not involve any significant changes in the substance of the existing escape-clause proclamations but do involve substantial simplification and clarification.

* * * * * * *

Items 927.50 through 927.54 relate to the escape-clause action taken with respect to certain knives, forks, and spoons. The proposed provisions for knives and forks involve incidental rate changes compatible with those proposed in the permanent provisions in part 3E of schedule 6 by reason of the elimination of the existing distinction between knives and forks based on blade length. This change is not significant.

Moreover, headnote 1 of part 2, subpart A of the appendix provides:

> 1. This subpart contains the temporary modifications of the provisions of the tariff schedules proclaimed by the President pursuant to the escape-clause procedures prescribed in section 7 of the Trade Agreements Extension Act of 1951, as amended, or in sections 301 and 351 or 352 of the Trade Expansion Act of 1962.

And in 101 Treas. Dec. 100, T.D. 66–26, setting forth Presidential Proclamation 3697 of January 7, 1966, which *inter alia* purported to terminate Presidential Proclamation 3323, the then Commissioner of Customs stated:

> * * * Proclamation No. 3323 was reflected, with modifications, in items 927.50 through 927.54 of the Appendix to the Tariff Schedules of the United States.

Patently, then, Presidential Proclamation 3323 was never transmuted into an act of Congress, as were the permanent provisions of the TSUS.

Nevertheless, defendant argues that the effect of not giving the temporary provisions in the appendix a statutory status "is merely to permit such temporary modifications to be subsequently changed, modified, or amended via Presidential proclamations issued pursuant to valid enabling legislation". While it is true, of course, that *an effect* of excepting escape-clause provisions from statutory status was to permit Presidential modification of such provisions by subsequent proclamations, *another effect* was that the temporary escape-clause provisions in the appendix never transcended their legal status as executive action, as was noted above. Accordingly, therefore, items 927.50 through 927.54, although incorporated (with minor modifications) into the Appendix to the Tariff Schedules,[10] have only the validity of the underlying Presidential proclamation, which I have determined was invalid. Congressional ratification of defects in the prior escape-clause remedies invoked by the President should not be implied where, as here, the escape-clause actions were merely relegated by the Tariff Commission to an appendix to the proposed schedules (along with other temporary and collateral provisions), no public hearings were held by the Commission respecting the appendix,[11] and such provisions were expressly denied statutory status by Congress.

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[10] In *United States* v. *Charberjoy Distributors, Inc.*, 59 CCPA 207, 209, C.A.D. 1068, 465 F.2d 922 (1972), the court stated: "Item 927.43 [sic] is based on a 1959 Presidential Proclamation in which a quota was imposed on certain flatware 'wholly of metal and in chief value of stainless steel,' provided for under a then-existing paragraph of the Tariff Act of 1930. * * * *This and other temporary 'escape-clause actions' or modifications were incorporated into the Appendix of the TSUS.* * * *" [Emphasis added.]

[11] See *Tariff Classification Study Submitting Report* (November 15, 1960), page 2.

Conclusion

In sum, while it is true that the escape-clause provisions in Proclamation 3323 were incorporated into an Appendix to the Tariff Schedules, the proclamation of the schedules (including the appendix) did not alter the legal status of such provisions as escape-clause action taken pursuant to section 7 of the Trade Agreements Extension Act of 1951, as amended. Since Proclamation 3323 is invalid, *a fortiori* items 927.50 through 927.54, which are based upon that void proclamation, are similarly invalid. Consequently, plaintiff's motion for summary judgment is granted, and defendant's cross-motion for judgment on the pleadings is denied.

The clerk of the court is directed to return to the district director of customs at the port of Los Angeles the entry and other official papers for reliquidation under the appropriate tariff items without regard for the provisions of items 927.50 through 927.54 of the Tariff Schedules of the United States.

(C.D. 4583)

C. T. Takahashi & Co., Inc. *v.* United States

Plywood

Plywood panels imported from Japan, which had been V-grooved, in addition to sanded and prefinished, were classified by the customs officials as plywood under paragraph 405 of the Tariff Act of 1930, as modified, with assessment of duty at the rate of 20 per centum ad valorem. Plaintiff's claim for classification under paragraph 412 of the Tariff Act of 1930, as modified, as "manufactures of wood" dutiable at the rate of 16⅔ per centum ad valorem, overruled. Plaintiff's contention that the V-grooving had advanced the plywood and created a new manufactured product, namely, wall paneling, not supported by the record.

The testimony established that V-grooving consisted of inserting the panels into a machine for grooves to be cut at 16-inch intervals parallel to the long sides of the panel. Notwithstanding this process which permitted the panels to be laid against one another without the edges being detected, the record established that they were purchased, invoiced and advertised as "plywood"; and that the panels were a form of "decorative plywood." The plaintiff's exhibits also established that the panels were commercially known as "plywood" and were offered to the public as such.

Plywood—Definition

As defined in *Borneo Sumatra Trading Co., Inc.* v. *United States*, 311 F. Supp. 326, 64 Cust. Ct. 185, C.D. 3980 (1970), the chief characteristics of plywood consist of "a combination of plies of wood arranged with the grain direction of alternate plies at right

angles." "Decorative plywood," as distinguished from structural plywood, is used to take advantage of its beauty rather than to add to the strength of a structure. The prefinished grooved plywood panels at bar were a form or variation of "decorative plywood" and properly classified under the *eo nomine* provision for plywood in paragraph 405 of the act. An *eo nomine* designation, without limitations or a contrary legislative intent, includes all forms of the product. See *Kaysons Import Corp.* v. *United States*, 56 Cust. Ct. 146, C.D. 2622 (1966).

PLYWOOD—CUT TO SIZE—PARTICULAR USE

The fact that the plywood panels have been cut and made suitable for a particular use does not necessarily prevent their classification under the *eo nomine* designation for plywood. See *Avins Industrial Products Co.* v. *United States*, 376 F. Supp. 879, 72 Cust. Ct. 43, C.D. 4503 (1974), appeal pending. It is equally established that an improvement in an article having an *eo nomine* designation does not remove it from classification under the *eo nomine* provision. See *Trans-Atlantic Company* v. *United States*, 471 F. 2d 1397, 60 CCPA 100, C.A.D. 1088 (1973). "Though merchandise may be given a new name, this circumstance does not necessarily indicate a new manufacture." *B. A. McKenzie & Co., Inc., et al.* v. *United States*, 47 CCPA 42, C.A.D. 726 (1959). By use of the term "wall panels" the importer described an intended purpose for the plywood panels but neither such intent nor actual use is alone determinative of the proper tariff classification. *B. A. McKenzie & Co., Inc.* v. *United States, supra.*

PROCESSING—MANUFACTURE

Although the plywood panels were processed by V-grooving, the question is one of degree, i.e., whether the particular processing constitutes a "manufacture" in the tariff sense. As stated by the Supreme Court in *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556, 28 S. Ct. 204 (1908) "[m]anufacture implies a change, but every change is not manufacture * * * [there] must be [a] transformation [and a] new and different article must emerge." The V-grooved plywood paneling did not lose its identity as plywood nor did the processing result in a "new and different article" having a distinctive name, character or use.

Court Nos. 70/35006, etc.

Port of Seattle

[Judgment for defendant.]

(Decided February 6, 1975)

Glad & Tuttle (*Edward N. Glad and John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Frederick L. Ikenson* and *Wesley K. Caine*, trial attorneys), for the defendant.

RE, Judge: In these sixteen protests, consolidated for purposes of trial, plaintiff contests the customs classification, and therefore the

duty assessed on certain merchandise imported from Japan. The merchandise, consisting of plywood panels, is described on the invoices as sizes of ¼″ by 4′ by 7′, or ¼″ by 4′ by 8′ plywood which has been V-grooved unfinished, V-grooved prefinished, V-grooved mismatched prefinished, or V-grooved book-matched prefinished.

The merchandise was classified by the customs officials as plywood, under paragraph 405 of the Tariff Act of 1930, as modified by T.D. 52739, with assessment of duty at the rate of 20 per centum ad valorem. Plaintiff claims that it should have been properly classified as "[m]anufactures of wood * * * not specially provided for" under paragraph 412 of the Tariff Act of 1930, as modified by T.D. 52373, supplemented by T.D. 52476, and hence dutiable at a rate of 16⅔ per centum ad valorem.

The competing tariff provisions may conveniently be set forth as follows:

Classified under:

Paragraph 405, Tariff Act of 1930, as modified by T.D. 52739:

"Plywood (except * * *):

* * * * * * * *

Other ..... 20% ad val."

Claimed under:

Paragraph 412, Tariff Act of 1930, as modified by T.D. 52373, supplemented by T.D. 52476:

"Manufacturers of wood or bark, or of which wood or bark is the component material of chief value, not specially provided for:

* * * * * * *

Other (except * * *) ..... 16⅔% ad val."

Simply stated, the question presented is whether plaintiff has borne its burden of proof in establishing that the plywood panels were erroneously classified under the *eo nomine* designation for plywood, and that they should have been properly classified under the tariff provision for manufactures of wood not specially provided for.

It is plaintiff's contention that by the V-grooving "the plywood is advanced to a further state of manufacture and becomes a new product with a use much limited from that of the material [it is] made from." Hence, plaintiff states the question presented to be "[w]hether cutting V-grooves in plywood panels represents a further manufacture of plywood, dedicating the finished product for use only as wall paneling and thus becoming something more than just plywood." It answers this question by asserting that "[c]utting V-grooves advances plywood and creates a new manufactured product, namely wall paneling."

Notwithstanding references to "prefinishing," it is clear that plaintiff relies upon the "V-grooving process" as the process of manufacture which it alleges removes the plywood paneling at bar from the *eo nomine* tariff provision which covers "plywood."

It is to be noted that Congress has established no tariff item that covers "wall panels," "wall paneling" or "plywood wall panels." Hence, the defendant cites the principle of customs law that "where an article is designated eo nomine * * * such designation must prevail over words of a general description, which might otherwise include the article specially designated." *United States* v. *Hatters' Fur Exchange*, 1 Ct. Cust. Appls. 198, 202, T.D. 31237 (1911).

In determining the applicability of an *eo nomine* designation it is well to recall that "Congress legislated for the future and is presumed to have intended to cover all forms of the article, including improved models not known in 1930." *Kaysons Import Corp.* v. *United States*, 56 Cust. Ct. 146, 150, C.D. 2622 (1966). See *Trans-Atlantic Company* v. *United States*, 471 F. 2d 1397, 60 CCPA 100, C.A.D. 1088 (1973). Also, once a court had judicially determined the common meaning of a statutory term it is the judicial policy "to adhere to such common meaning until a legislative change in the statutory enactment in question necessitated a changed determination of such meaning." *United States* v. *North American Mercantile Co.*, 17 CCPA 378, 381, T.D. 43820 (1930).

At the trial, the plaintiff and defendant each called five witnesses. Plaintiff introduced thirteen exhibits and the defendant introduced nine. From the voluminous record and the testimony of all of the witnesses, there can be no question about the nature of the merchandise. The witnesses all described the merchandise without difficulty, and no disagreement existed among them except when they stated their opinion as to its classification. For example, plaintiff's first witness testified that V-grooved wall paneling comes in sizes 4 feet by 7 feet to 4 feet by 12 feet. It contains one-half of a V-groove on the edge so that when laid against another panel the edges cannot be easily detected. The grooves are spaced 16 inches apart in conformity with American building codes, i.e., the American standard 16 inch stud. Also nails may be driven through the panels without leaving unsightly nailheads.

An expert who testified for the defendant indicated that the spacing of the grooves at 16-inch intervals was "a convenient arrangement," but that "this product is not limited to an application of 16 inch stud centers any more than a panel that had no grooves at all in it would be limited to a particular stud spacing." The witness explained any "grooves could be used as well as those that are on 16 inch centers for the attachment by means of nails." Not only may panels be

of no limitation on the term "plywood." In his "understanding of plywood, it is any product, regardless of what has been done to it, that meets the definition of plywood, involving cross-lamination for purposes of dimensional stability and uniform strength."

It is significant to note that some of plaintiff's witnesses, when asked about "doorskins," testified that they did not consider "doorskins" to be plywood. In their opinion "doorskins" are not plywood but a manufacture of plywood because they "are another further manufactured product made of plywood," and have been committed to a single use.

The examination pertaining to "doorskins" had reference to the case of *B. A. McKenzie & Co., Inc., et al.* v. *United States*, 47 CCPA 42, C.A.D. 726 (1959). In the *B. A. McKenzie* case, the Court of Customs and Patent Appeals affirmed the judgment of this court which sustained the classification of plywood panels, called "doorskins," as plywood. The appellate court concluded that "[t]he manufacture of plywood panels in specified sizes does not change the nature of the product. The resultant 'manufacture' still is plywood as that term is used in paragraph 405 of the Tariff Act of 1930 as amended." 47 CCPA at 46. Of course, in testifying that "doorskins" are not plywood but "another further manufactured product made of plywood," or a manufacture of plywood, plaintiff's witnesses evidenced disagreement with the reasoning and holding of the *B. A. McKenzie* case.

In the case of *Borneo Sumatra Trading Co., Inc.* v. *United States*, 311 F. Supp. 326, 64 Cust. Ct. 185, C.D. 3980 (1970), this court treated at length the nature and characteristics of plywood, and certain principles of law applicable here. It cannot be questioned that the merchandise at bar is fully embraced within the definitions of plywood quoted and enunciated in the *Borneo Sumatra* case. That case discussed at length the meaning of the *eo nomine* provision for plywood, as found in paragraph 405 of the Tariff Act of 1930, under which the plywood panels at bar have been classified. Although it is not necessary to restate either the definitions of plywood, or the other well-established principles stated in the *Borneo Sumatra* case, it is well to note that plywood has been defined in terms of its construction.

Plaintiff's reliance upon *United States* v. *Briggs Manufacturing Co.*, 14 Ct. Cust. Appls. 1, T.D. 41526 (1926) is unavailing since the *Briggs* case was decided before the Tariff Act of 1930. Furthermore, the *Briggs* case did not deal with the definition of plywood. Although the merchandise in the *Briggs* case was in fact "plywood," the question presented there was whether, under the Tariff Act of 1922, it was classifiable as "veneers of wood," or as "manufactures of wood," as classified by the collector of customs. Since the manufacturing process

in making the plywood [gluing and pressing, etc.] consisted of "at least seven different operations before the material is a completed product," the court held the product to be more than veneers, and sustained the classification as "manufactures of wood." 14 Ct. Cust. Appls. at 2. The *Briggs* case, therefore, did not address itself to the meaning of the statutory designation of "plywood." For the meaning of "plywood," under paragraph 405 of the Tariff Act of 1930, one must turn to the later case of *Borneo Sumatra*. See *B. A. McKenzie & Co., Inc., et al.* v. *United States*, 47 CCPA 42, 45, C.A.D. 726 (1959).

As indicated, the plywood panels at bar are beyond question "plywood" as defined and described in the *Borneo Sumatra* case. Moreover, the mere fact that the plywood panels have been cut and made suitable for a particular use would not necessarily prevent their classification under the *eo nomine* designation for plywood. Consequently, plaintiff's reliance upon the case of *United States* v. *Dudley*, 174 U.S. 670, 19 S. Ct. 801 (1899) is misplaced. See also cases cited in *Avins Industrial Products Co.* v. *United States*, 376 F. Supp. 879, 72 Cust. Ct. 43, C.D. 4503 (1974), appeal pending. Hence, in the *Avins* case the court held that "the fact that the instant merchandise has been cut to length and is in certain dimensions making it particularly adaptable for use in producing radio antennas does not take it out of the category wire * * *." *Id.* at 52.

Plaintiff, in its brief, asserts that "[j]udicial authorities substantiate the proposition that cutting represents a process of manufacture." If by that statement plaintiff implies that cutting *per se* removes a product from a statutory *eo nomine* designation, the court does not agree. Plaintiff relies heavily on the case of *United States* v. *Flex Track Equipment Ltd., et al.*, 458 F. 2d 148, 59 CCPA 97, C.A.D. 1046 (1972). The merchandise in the *Flex Track* case consisted of rolls of arctic track treads that had been classified as belting and belts for machinery. The importers claimed that it was properly dutiable as other parts of motor vehicles. This court concluded that the imported merchandise was designed and used as more than belting for machinery, and therefore sustained the protest. In affirming the decision of this court, the Court of Customs and Patent Appeals noted that the "process of manufacture [had] invested [the importation] with new functions." 59 CCPA at 101. It indicated that the imported track treads did more than transmit motion, "they also give the motor vehicle support, traction, and stability." The quotations of the appellate court from the opinion of the Customs Court show clearly that much more than cutting was involved in the processing of the belting. The belting was not only cut to length, but "holes were punched throughout the width and length of the cut belting." Furthermore, the length, number and spacing of the holes, varied "according

to the size vehicle for which intended * * *." 59 CCPA at 99. The findings of new functions that were made by the trial court about the belting in the *Flex Track* case, cannot be made about the grooved panels at bar.

The other cases cited by plaintiff are also distinguishable. Not only was more than mere "cutting" involved in these cases, but the resulting product acquired new characteristics and a new use different from that which characterized the original material. See *United States* v. *Pittsburgh Plate Glass Co.*, 44 CCPA 110, C.A.D. 646 (1957) (jalousie or glass slats or louvers held to be "manufactures of glass"); *M. Martinez & Co.* v. *United States*, 24 CCPA 285, T.D. 48703 (1936) (bailing ties composed of wire cut to lengths, one end being turned back and twisted so as to form a loop, classified as "manufactured articles").

The case of *David M. Studner* v. *United States*, 295 F. Supp. 289, 62 Cust. Ct. 63, C.D. 3679 (1969) is not helpful since the question there was whether used print rollers which were invoiced as lamp bases were "[a]rticles * * * not specially provided for, whether partly or wholly manufactured" or "[w]aste." "Waste" is a word of art in customs law, and the cutting off of one end of the obsolete print rollers gave it a use different from its original purpose. Hence, as understood in the law of waste, the product had been "remanufactured" and the advancement and new and different use clearly made the product more than waste. See also *Cheltenham Supply Corp.* v. *United States*, 306 F. Supp. 472, 63 Cust. Ct. 271, C.D. 3908 (1969).

The crucial question, therefore, pertains to the applicability of the *eo nomine* designation of plywood. The principle is well established that the *eo nomine* statutory designation, without limitations or a contrary legislative intent, includes all forms of the product. See *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935) and cases cited in *Crosse & Blackwell Co.* v. *United States*, 36 CCPA 33, C.A.D. 393 (1948). It is equally well established that an improvement in an article having an *eo nomine* designation does not remove it from classification under the *eo nomine* provision. See *Trans-Atlantic Company* v. *United States*, 471 F. 2d 1397, 60 CCPA 100, C.A.D. 1088 (1973); *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970); *Giddings & Lewis Machine Tool Co. et al.* v. *United States*, 292 F. Supp. 394, 61 Cust. Ct. 284, C.D. 3612 (1968). Furthermore, if the product is embraced in the *eo nomine* statutory designation, its use does not, *per se*, take it out of that category. See *United States* v. *Page N. Goffigon*, 43 CCPA 172, 175–76, C.A.D. 625 (1956).

The *B. A. McKenzie* case, which dealt with "doorskins," warrants further analysis. The "doorskins" consisted of three-ply lauan plywood imported in panels of rectangular shapes. The panels were manufac-

tured and sold as face panels for use in the manufacture of flush doors. These plywood panels, called "doorskins," were supplied in assorted widths and lengths which varied by two-inch increments corresponding generally to the widths and lengths of doors of standard sizes.

The doorskins were classified by the customs officials as plywood under paragraph 405 of the Tariff Act of 1930, as modified by T.D. 52739, the same tariff provision under which the V-grooved wall paneling at bar was classified. The classification of the doorskins as plywood was sustained by this court, and the importers appealed. The evidence showed that the panels of plywood, in their imported condition, were designed, manufactured, sold and used as parts of flush doors. Hence, the importers contended that the doorskins ceased "to be classifiable as plywood under paragraph 405 since they are manufactures of wood, i.e., unfinished face panels for flush doors." 47 CCPA at 43. The government, on the other hand, maintained that the doorskins had been properly classified under the *eo nomine* provision for plywood, i.e., paragraph 405.

In affirming the classification of the doorskins as plywood under paragraph 405, the appellate court found that "the only physical characteristics which distinguish the imported plywood 'doorskins' from other eighth-inch thick panels of plywood are their length and width dimensions."

After summarizing the evidence the court stated:

> "This evidence does not establish that the dimensions of the imported plywood panels have made them an article which is distinct from plywood and which may no longer be used for a large portion of the potential uses of plywood." 47 CCPA at 45.

Hence, the appellate court expressly agreed with the finding of this court that the imported doorskins "were but rectangular shapes of plywood and were properly classified as 'plywood,' within the *eo nomine* designation of paragraph 405."

Pertinent to the present case is the court's statement that "[w]here a provision of the Tariff Act names an article without terms of limitation, as does the *eo nomine* provision for plywood in paragraph 405, all forms of the article are thereby included." 47 CCPA at 45.

Equally pertinent is the court's quotation from *United States* v. *Astra Trading Corp.*, 44 CCPA 8, 11, C.A.D. 627 (1956), that:

> "The principle is too well established for the citation of references that, in determining the classification of goods, an *eo nomine* designation must, unless a legislative intent to the contrary is clearly indicated, be preferred to terms of general description and to enumerations which are broader in scope and less specific."

In the *B. A. McKenzie* case the plywood panels were known as *doorskins*, and the court therefore also addressed itself to the question of a new name for the imported product. Significantly enough, the court stated that "[t]hough merchandise may be given a new name, this circumstance does not necessarily indicate a new manufacture," and added:

> "The term 'doorskin' undoubtedly is used by the importer to describe an intended purpose for which the plywood panels are imported. However, neither such intent nor the actual uses of the panels as 'doorskins' are alone determinative of the proper tariff classification." 47 CCPA at 46.

The quotation from the *B. A. McKenzie* case may be easily modified as follows to apply to the present case of wall panels. By "wall panels" or "wall paneling," the importer wishes "to describe an intended purpose for which the plywood panels are imported. However, neither such intent nor the actual uses of the panels as [wall paneling] are alone determinative of the proper tariff classification." Hence, plaintiff's reliance upon the *use* of the V-grooved plywood panels is largely misplaced. The record is replete with testimony, and plaintiff's exhibits leave no doubt, that various types of plywood panels, in addition to those in question, are all used for wall paneling.

In the *B. A. McKenzie* case the importers also argued that changes in dimension were "sufficient processing to constitute a manufacture," and therefore the "doorskins" should have been classified as "manufactures of wood n.s.p.f." This argument was expressly rejected, and, citing *J. B. Henriques, Inc.* v. *United States*, 46 CCPA 54, C.A.D. 695 (1958), the court stated that "[e]ach case stands upon its own particular facts." 47 CCPA at 46. As indicated previously, the argument that cutting to length constitutes a sufficient "manufacture" was also rejected in the more recent case of *Avins Industrial Products Co.* v. *United States*, 72 Cust. Ct. 43, C.D. 4503 (1974).

The court, in the *B. A. McKenzie* case, observed that whether an imported article is a manufacture "must depend upon the facts presented in each case to show the nature of the material involved and the degree of processing to which it was subjected prior to importation." It is significant that the court concluded that the "manufacture of plywood panels in specified sizes does not change the nature of the product," and that the "resultant 'manufacture' still is plywood as that term is used in paragraph 405 of the Tariff Act of 1930 as amended." 47 CCPA at 46.

The language of the court in the *B. A. McKenzie* case is particularly pertinent to the present case. Just as cutting to sizes did not "change the nature of the product" of the doorskins, the V-grooving does not "change the nature of the product" of the plywood wall panels.

The question, whether the V-grooving is a sufficient processing to constitute a manufacture, is not answered by assertions that equate processing with "manufacture." All processing involves a "change," but the question is one of degree, i.e., whether the particular processing constitutes a "manufacture" in the tariff sense. As stated by the Supreme Court in *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556, 28 S. Ct. 204 (1908), "[m]anufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation." The court indicated that "something more is necessary," i.e., that there "must be [a] transformation," and that a "new and different article must emerge." *Id.* at 562. Hence, in the *Anheuser-Busch* case, even though the corks therein had been subjected to a process that took from one to three days, the Supreme Court, nevertheless, decided that "[a] cork put through the claimant's process is still a cork." *Ibid.*

The Supreme Court in the *Anheuser-Busch* case cited one of its earlier cases which dealt with shells that had their outer layer ground off so as to exhibit the beautiful inner layer. The process consisted of cleaning the outer layer of the shell by acid, then grinding off the the second layer by an emery wheel, and afterward polishing, so as to expose the brilliant inner layer. In this earlier case, *Hartranft* v. *Wiegmann*, 121 U.S. 609, 7 S. Ct. 1240 (1887), the Supreme Court wrote:

> "We are of opinion that the shells in question here were not manufactured, and were not manufactures of shells, within the sense of the statute imposing a duty of 35 per centum upon such manufactures, but were shells not manufactured, and fell under that designation in the free list. They were still shells. They had not been manufactured into a *new and different article, having a distinctive name, character or use from that of a shell.* The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article, within the meaning of that term as used in the tariff laws." 121 U.S. at 615. (Emphasis added.)

The processing to which the plywood panels at bar were subjected did not result in a "new and different article, having a distinctive name, character or use * * *." The V-grooved plywood paneling has not been subjected to a manufacturing process that has caused it to lose its identity as plywood, and has become a "new and different" article.

The record reveals that the controverted paneling was known to the trade and advertised as "plywood." It also shows that plywood panels, with or without V-grooving, are used to panel walls. The V-grooved plywood is a form of "decorative plywood," and "decorative plywood,"

which has been subjected to a sanding and prefinishing process, is a form of plywood. It is also clear from the exhibits and testimony that all decorative plywood paneling, whether grooved or ungrooved, is used for the same purposes. No authority has been shown that would warrant granting to one type of "decorative plywood" a different customs treatment than is accorded to the class.

In view of the foregoing, it is the determination of the court that plaintiff has not borne its burden of proof. The court also concludes that the V-grooved plywood panels have been properly classified and dutiable under the *eo nomine* provision for plywood in paragraph 405 of the Tariff Act of 1930, as modified.

Judgment will issue accordingly.

(C.D. 4584)

THE CARBORUNDUM COMPANY *v.* UNITED STATES

Ferroalloys—Ferrosilicon

The imported ferrosilicon, which admittedly contains 16.33 percent silicon and not over 30 percent of manganese, by weight, is a ferroalloy pulverized to the condition of powder and used in the heavy-media process that separates two materials of different specific gravities.

1. As a matter of law, the term "ferroalloys" means alloys of iron, *inter alia*, commonly used as a raw material in the manufacture of ferrous metals and "ferrosilicon" is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon. TSUS, schedule 6, part 2, subpart B, headnote 2.

2. Argument that the imported ferrosilicon is not commonly used as a raw material in the manufacture of ferrous metals and, therefore, not a ferroalloy is rejected for two reasons: (1) the imported ferrosilicon meets the weight specification set forth by Congress in the statutory headnote setting forth ferrosilicon to be a ferroalloy; (2) the weight of the evidence establishes that the imported ferrosilicon is ferrosilicon which as a class or kind is chiefly and, therefore commonly used as a raw material in the manufacture of ferrous metals.

Held. The imported ferrosilicon is *eo nomine* more specifically provided for under the superior heading "ferroalloys" than under the superior heading "iron or steel powders" wherein under the inferior heading "Other powders" it was rated dutiable under item 608.08 as "alloy iron or steel powder" other than stainless steel powder. The imported ferrosilicon is properly classifiable under the TSUS superior heading "ferroalloys" as that dutiable product *eo nomine* provided for under the inferior heading item 607.50 as ferrosilicon, containing over 8 percent but not over 60 percent, by weight, of silicon, as claimed by plaintiff.

Court No. 72-6-01324

Port of Buffalo

[Judgment for plaintiff.]

(Decided February 10, 1975)

Barnes, Richardson & Colburn (*Joseph Schwartz* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

LANDIS, Judge: This action concerns the customs classification, at Buffalo, N.Y., of a product imported from Canada on August 6, 1969, described on the commercial invoice as abrasive furnace ferrosilicon.

Customs officials classified the product as an alloy of iron or steel powder, other than stainless steel powder, dutiable at 15 per centum ad valorem under item 608.08 of the Tariff Schedules of the United States (TSUS).

Plaintiff complains that the customs classification is incorrect and that the product instead is properly classifiable as ferrosilicon containing over 8 percent but not over 60 percent by weight of silicon (not over 30 percent manganese), dutiable under TSUS item 607.50 at 0.4 cent per pound on the silicon content.

The appropriate schedule 6, part 2, subpart B headnote, and pertinent items thereunder are as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

Part 2. – Metals, Their Alloys, and Their Basic Shapes and Forms

Subpart B. – Iron or Steel

Subpart B headnotes.

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms; and in addition covers iron or steel waste and scrap.

2. Grades of Iron, Steel, and Ferroalloys.—For the purposes of the tariff schedules, the following terms have the meanings hereby assigned to them:

* * * * * * *

(e) Ferroalloys: Alloys of iron (except spiegeleisen and ferronickel, as defined in headnotes 2(c) and 2(d), supra, respectively) which are not usefully malleable

and are commonly used as raw material in the manufacture of ferrous metals and which contain one or more of the following elements in the quantity, by weight, respectively indicated:

over 30 percent of manganese, or
over 8 percent of silicon, or
over 30 percent of chromium, or
over 40 percent of tungsten, or
a total of over 10 percent of other alloy elements, except copper, and

which, if containing silicon, do not contain over 96 percent of nonferrous alloy elements, or, if containing manganese but no silicon, do not contain over 92 percent of nonferrous alloy elements, or, if containing no manganese and no silicon, do not contain over 90 percent of nonferrous alloy elements. For the purposes of this subpart—

(i) ferrochromium is a ferroalloy which contains, by weight, over 30 percent of chromium but not over 10 percent of silicon;

(ii) ferromanganese is a ferroalloy which contains, by weight, over 30 percent of manganese but not over 10 percent of silicon;

(iii) ferromolybdenum is a ferroalloy which contains, by weight, over 50 percent of molybdenum;

(iv) ferrophosphorus is a ferroalloy which contains, by weight, over 15 percent of phosphorus;

(v) ferrosilicon is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon;

* * * * * * * [1]
* * * * * * *

Ferroalloys:

* * * * * * *

Ferrosilicon:

607.50 Containing over 8 percent but not over 60 percent by weight of silicon ..... 0.4¢ per lb. on silicon content

[1] There follow similar statements with respect to ferrosilicon chromium, ferrosilicon manganese, ferrosilicon titanium, ferrosilicon tungsten, ferrotitanium, ferrotungsten, ferrovanadium, and ferrozirconium.

607.51	Containing over 60 percent but not over 80 percent by weight of silicon	* * *
607.52	Containing over 80 percent but not over 90 percent by weight of silicon	* * *
607.53	Containing over 90 percent by weight of silicon	* * *
*	* * * * * *	*
	Sponge iron; iron or steel powders:	
	Sponge iron, including powders thereof:	
*	* * * * * *	*
	Other powders:	
608.05	Other than alloy iron or steel	* * *
	Alloy iron or steel:	
608.06	Stainless steel powders	* * *
608.08	Other	15% ad val.

The issue in this case clearly appears from the Government attorney's opening statement, in substance as follows:

The invoice shows the merchandise to be ferrosilicon and the witnesses for the plaintiff and the defendant refer to the merchandise as ferrosilicon but it is the Government's contention that nevertheless the merchandise is not ferrosilicon (under the main superior heading for ferroalloys) as defined in headnote 2(e) to schedule 6, part 2B of the tariff schedules. Ferroalloys are there defined as "alloys of iron which * * * are commonly used as raw material in the manufacture of ferrous metals," but the Government will show the merchandise is of a particular class and grade of iron alloy not commonly used as a raw material in the manufacture of ferrous metals.[2] The facts relevant to the argument of that issue are not in dispute and can be stated briefly.

The imported ferrosilicon (exhibit 1)[3] contains 16.33 percent silicon and not over 30 percent of manganese, by weight. It is provenly ferrosilicon albeit a special type pulverized to the condition of powder [4] for use in the sink-float or heavy-media process that separates two materials of different specific gravities. That process is used at iron mines to separate iron ore from gangue, by scrap processors, and by the trade in rock or stone aggregate for road construction.

Plaintiff's witness, Mr. Jackson, was of the opinion that since the heavy-media process of separating iron ore from gangue is a step

[2] The relative specificity of items 607.50 and 608.08 is not in dispute. Defendant's pleading admits plaintiff's allegation that item 607.50 is more specific than item 608.08.

[3] Various other exhibits in evidence will be referred to only to the extent deemed relevant.

[4] Much of the trial testimony is devoted to the question of whether the imported product is in the form of powder. Since plaintiff does not argue that it is not powder, I assume that the form or condition of the product as powder is not in dispute.

necessary to prepare the iron for melting in the furnace, the use of powder ferrosilicon in the process was as a raw material in the manufacture of ferrous metals. He admitted that powder ferrosilicon was not added to the blast furnace as a raw material.

Defendant's witness Fairchild (employed by the Foote Mineral Company) stated that his company's competing pulverized silvery pig iron represented by exhibit A, while the chemical analysis is not identical, is a heavy-media ferrosilicon competitive with the imported product represented by exhibit 1. Mr. Fairchild testified that exhibit A is a ferroalloy, because the chemical analysis of the material is approximately fifteen and one-half percent silicon, possibly one percent manganese, about eight-tenths of carbon and less than one percent of other trace elements. Mr. Fairchild was of the opinion that powder ferrosilicon was not suitable for use as a raw material in the manufacture of ferrous metals but replied, when next asked on defendant's direct examination, as follows:

> Q. Then, in terms of the definition of ferroalloy which you agreed to before [raw material used in the manufacture of ferrous metals] is Defendant's Exhibit A, in its present condition, in powder form, such a ferroalloy?
>
> * * * * * * *
>
> THE WITNESS: Well, it would appear that the two definitions are mutually incompatible. The definition of ferroalloy doesn't identify the physical nature of the ferroalloy. It indicates, possibly, somewhat the chemical nature, iron plus an alloying element, but it doesn't indicate whether the material is in lump or powder form. I think the definition of ferroalloy is very general and it is not specific as to the physical form of the material.

Defendant's witnesses were of the opinion that the heavy-media separation was not a step in the manufacture of ferrous metals which, in their opinion, starts with the reduction of ores in the blast furnace.

Defendant's witness, Mr. Joynt, chief metallurgist at Republic Steel, Buffalo, N.Y., testified that powder ferrosilicon is too fine to be used in the manufacture of ferrous metals but he stated that his company had used powder ferrosilicon, made into briquets, as a raw material in the manufacture of ferrous metals. All witnesses, so asked, agreed that ferrosilicon, without regard to form or condition, is a class or kind of product chiefly used as raw material in the manufacture of ferrous metals.

The dispute in this case, quite obviously, is bottomed on the form and condition of the imported ferrosilicon and its use in that form and condition, namely, powder. Plaintiff argues that the form and condition does not control the classification of ferrosilicon because it is a classification of a class or kind of ferroalloy and, irrespective

of its form or condition and use in that form or condition, ferrosilicon is a class or kind of ferroalloy commonly used as a raw material in the manufacture of ferrous metals. In an additional point, plaintiff contends that the heavy-media process of separating iron ore from gangue is a process in the manufacture of ferrous metals, and that powder ferrosilicon commonly used in the separation process of iron ore from gangue, is a raw material in the manufacture of ferrous metals within the meaning and intent of the statutory headnotes relevant to the classification of ferroalloys and ferrosilicon. Defendant agrees that the term "ferroalloys" is intended to classify a class or kind of product that includes ferrosilicon. Defendant takes the position, however, that powder ferrosilicon used in the heavy-media process of separating iron ore from gangue is not ferrosilicon of the class or kind that is a ferroalloy for the reason that its use in the heavy-media process is not as a raw material in the manufacture of ferrous metals.[5] Plaintiff, in reply, alludes to the proof that the imported powder ferrosilicon contains over 8 percent but not over 60 percent, by weight, of ferrosilicon. That proof says plaintiff *ipso facto* establishes that it is a ferroalloy, presumedly under the relevant statutory headnote which states that for the purposes of subpart B, in which ferrosilicon is classified, "ferrosilicon is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon."

I hold the imported abrasive furnace ferrosilicon properly dutiable as ferrosilicon under TSUS item 607.50 for two reasons, to wit:

Firstly, the statutory headnote definitively states that ferrosilicon is a ferroalloy which contains by weight, not over 30 percent of manganese and over 8 percent of silicon. Defendant's pleading admits that the imported ferrosilicon meets those weight specifications.

Secondly, even assuming as defendant contends, the definition of the term "ferroalloys," viz: "alloys of iron * * * commonly used as raw material in the manufacture of ferrous metals" is determinative of the issue in this case, then under the evidence the imported ferrosilicon is ferrosilicon which is a class or kind of iron alloy that is commonly used as a raw material in the manufacture of ferrous metals. The weight of the evidence establishes that without regard to its form or condition, the imported ferrosilicon is, *eo nomine*, ferrosilicon which as a class or kind is chiefly and, therefore, commonly used as a raw material in the manufacture of ferrous metals.

As to my first reason, *supra*, for sustaining plaintiff's claimed classification under TSUS item 607.50, I note that defendant, contending that ferrosilicon in powder form is not a ferroalloy, relies

[5] Defendant's answer admits that the imported ferrosilicon meets the requirement that it not be usefully malleable.

entirely on the headnote definition that states that ferroalloys are alloys of iron, *inter alia*, commonly used as raw material in the manufacture of ferrous metals. To accept defendant's argument that the imported ferrosilicon is not commonly used as a raw material in the manufacture of ferrous metals and, therefore, not a ferroalloy, one must conclude that the superior heading "ferroalloys" is narrower than the inferior heading "ferrosilicon." That conclusion is, however, patently at variance with TSUS General Interpretative Rule 10(c)(i) which states that "a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby." The conclusion is also clearly inapposite to what Congress was told in connection with the TSUS classification of "ferroalloys" and "ferrosilicon" namely, that "[s]urely, there is something amiss if the existing provisions [1930 Tariff Act] require that the generic word 'alloy' have a meaning more limited than a specific designation for a common ferroalloy known as 'ferrosilicon'." (Tariff Classification Study, Schedule 6, Part 2, page 87.)

Defendant's argument further assumes that the meaning assigned to the term "ferroalloys" in TSUS is all there is to the context of the headnote. But the context of the headnote does more than just assign a meaning to the term "ferroalloys." It is a well known judicial principle that statutes must be read and understood in their entire context. What defendant has significantly ignored or avoided discussing is the complete text of the headnote where Congress, after assigning a meaning to the term "ferroalloys," goes on to further state that for the purposes of the subpart (referring to the term "ferroalloys" and classifying the common ferroalloys) "ferrosilicon is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon." That, in my opinion, is a positive, straightforward and unambiguous statement that, within those weight specifications, ferrosilicon is a ferroalloy. Cf. *C. J. Tower & Sons of Buffalo, Inc.* v. *United States*, 56 Cust. Ct. 152, 162, C.D. 2623 (1966). If the TSUS statement was less positive or was not set forth in the headnote on ferroalloys, the classification of ferrosilicon would be uncertain and in every case subject to proof that ferrosilicon was commonly used as a raw material in the manufacture of ferrous metals. The proposition that Congress did not intend to leave it open to be decided whether ferrosilicon in each case was used as a raw material in the manufacture of ferrous metals, but set its own determinant by providing simply that ferrosilicon is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon is, moreover, not new in the judicial classification of alloys. *United States* v. *Gulf Oil Corporation, et al.*, 47 CCPA 32, 41, C.A.D. 725 (1959) (alloy steel); *C. J. Tower & Sons* v. *United States*, 41 CCPA 195,

C.A.D. 550 (1954) (alloy aluminum silicon); *American Import Co.* v. *United States*, 26 CCPA 116, C.A.D. 3 (1938) (alloy of copper); *United States* v. *Baltimore & Ohio R. R. Co.*, 16 Ct. Cust. Appls. 180, 185, T.D. 42810 (1928) (non-manganese alloy).

Getting on to my second reason, *supra*, for sustaining plaintiff's claimed classification under TSUS item 607.50, apropos defendant's basic argument, it is in my opinion completely illogical to admit that ferrosilicon is a class or kind of ferroalloy, as defendant does, and then go on to argue that the imported ferrosilicon is not that class or kind of ferrosilicon which is a ferroalloy.[6] If Congress intended ferrosilicon in powder form[7] to be classified differently from the *eo nomine* class of ferrosilicon, it seems strange that it did not do so in the clear fashion by which it excepted "spiegeleisen and ferronickel" from the meaning assigned the term "ferroalloys."[8]

This action claiming classification of the imported ferrosilicon under TSUS item 607.50 is, accordingly, sustained. Judgment will so enter.

(C.D. 4585)

ESCO MANUFACTURING CO., AKA J. HOFERT CO. *v.* UNITED STATES

Christmas-tree lamps

Merchandise described on the invoices as C-9 type "Christmas Light Bulbs" or "Christmas Bulbs" was classified on liquidation under item 686.30 of the tariff schedules as "Christmas-tree lamps" and assessed duty at the rate of 10 percent ad valorem. The importer claims they are properly classifiable under item 686.90 as "other electric filament lamps" with duty at the rate of either 5.5 or 4.5 percent ad valorem, depending on the date of entry. *Held:* Plaintiff has failed to overcome the presumption of correctness attendant upon the government's classification since it did not establish that the class or kind of merchandise imported was not chiefly used as Christmas-tree lamps. Further, the record demonstrates that the imported C-9 bulbs come within the common meaning of the term "Christmas-tree lamps" as used in item 686.30.

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[6] The phrase "commonly used" is classic tariff language intended to classify a class or kind of product. Cf. *Meyers & Co.* v. *United States*, 10 Ct. Cust. Appls. 216, 218, T.D. 38557 (1920); *Holdwire, Ltd.* v. *United States*, 49 Cust. Ct. 19, C.D. 2355 (1962); *United States* v. *Astra Bentwood Furniture Co.*, 25 CCPA 340, 345, T.D. 49434 (1938).

[7] Compare, TSUS definition of "ferroalloys" with the not substantially different Brussels Nomenclature heading 73.02 definition of ferroalloys that includes "ferroalloys * * * in the form of ingots, blocks, lumps, pieces, granules or *powder*." [Emphasis added.] The Brussels Nomenclature "* * * [which] exterd the greatest influence on the arrangement of the proposed revised schedules" (Tariff Classification Study, Submitting Report, page 8) is persuasive that the TSUS term "ferroalloys" includes powder. Cf. *Schwarz* v. *United States*, 57 CCPA 19, 22, C.A.D. 971 (1969).

[8] For explanation excepting ferronickel from the definition of "ferroalloys" see, Tariff Classification Study, Schedule 6, Part 2, page 91.

Court No. 72-1-00240

Port of Los Angeles

[Judgment for defendant.]

(Decided February 11, 1975)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

MALETZ, Judge: This case involves the proper tariff classification of electric filament lamps described on the invoices as C-9-¼ type, 120 volt "Christmas Light Bulbs" or "Christmas Bulbs." [1] The articles—which were imported from Japan via the port of Los Angeles in 1970 and 1971—were classified by the government under item 686.30 of the tariff schedules as "Christmas-tree lamps" and assessed duty at the rate of 10 percent ad valorem.

Plaintiff claims that the imported lamps are properly classifiable under item 686.90 of the tariff schedules, as modified by T.D. 68-9, as "other electric filament lamps, designed for operating at 100 volts or more" with duty at the rate of either 5.5 or 4.5 percent ad valorem, depending on the date of entry.[2]

Set forth below are the provisions of the tariff schedules relevant to this action:

> 10. General Interpretative Rules. For the purposes of these schedules—
>
> * * * * * * *
>
> (e) in the absence of special language or context which otherwise requires—
>
> (i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;
>
> * * * * * * *

[1] The terms "bulb" and "lamp" are used interchangeably throughout the record. For that reason, reference in this opinion to either term includes and represents the other. It is further to be noted that the designation 9, 9-¼, or 9-⅛ in the C-9, C-9-¼, or C-9-⅛ bulb and the designation 7 or 7-⅛ in the C-7 or C-7-½ bulb represents the number of eighths of an inch at the maximum diameter of the glass envelope. (For example, the C-7 bulb measures ⅞ of an inch at the maximum diameter.) Finally, it is to be observed that the imported bulb is referred to interchangeably in the record as a C-9 or C-9-¼ or C-9-⅛ bulb and that the C-7 bulb is referred to interchangeably as a C-7 or C-7-½ bulb. Therefore, for purposes of this opinion, the terms C-9 and C-7 will be used to refer to the respective bulbs.

[2] At trial plaintiff abandoned its claim with respect to protest 27011003288.

	Electric filament lamps and electric discharge lamps * * *		
	Filament lamps:		
686.30	Christmas-tree lamps		10% ad val.
	* * * * * * *		
	Other:		
	* * * * * * *		
		1970	1971
686.90	Designed for operating at 100 volts or more	5.5% ad val.	4.5% ad val.

With respect to these provisions, the parties agree in the pleadings that item 686.30 covering "Christmas-tree lamps" is a use provision whose ambit is controlled by general interpretative rule 10(e)(i). The parties also agree that if the government's classification under item 686.30 is found to be erroneous, then the claimed classification under item 686.90 would be correct. In this setting, plaintiff contends that the weight of the evidence establishes that the imported C–9 lamps are not chiefly used on Christmas trees and, therefore, cannot be classified under item 686.30. In this connection, plaintiff argues that the term Christmas tree as used in item 686.30 is limited to vegetation which is in fact a tree and does not cover vegetation of any other form such as shrubs, etc.

Defendant, on the other hand, maintains (1) that plaintiff has failed to establish that the imported C–9 lamps are not members of a class or kind of lamps whose chief use was as Christmas-tree lamps; (2) that even assuming that plaintiff has established that the imported C–9 lamps *per se* were not chiefly used in the manner contemplated by item 686.30, they still would be classifiable under that item since they are of a class which encompasses both C–9 and C–7 lamps and plaintiff has failed to prove that this class was not chiefly used in the manner contemplated by item 686.30; and (3) that item 686.30 is an *eo nomine* by use provision under which the common meaning of the term "Christmas-tree lamp" is not limited to lamps used on "Christmas trees" *per se* but includes lamps used for such related purposes as decorating other trees, shrubs, houses, offices, etc.

I

Turning to the record, five witnesses were called by plaintiff and two by defendant.[3] All of the five witnesses were engaged in the

[3] Plaintiff called the following witnesses: (1) Edward Scott, general manager of the decoration department of the plaintiff firm, J. Hofert Co., which does business as Esco Manufacturing Co. and is engaged in manufacturing and assembling Christmas lights, importing decorations, and dealing in natural and artificial (Continued)

business of Christmas lights and decorations and all were qualified to testify thereon. From their testimony and the accompanying 28 exhibits, the following facts emerged: The imported C–9 lamp is a small, 10-watt, intermediate-base bulb, which is specifically designed to produce colored light. It is primarily sold and used during the Christmas season which extends from mid-November to the end of December.

There are two major categories of Christmas lamps, i.e., the C–9 lamp which is known as the outdoor type, and the C–7 lamp, a candelabra-base bulb, which is known as the indoor type. These lamps are marketed in the Christmas decoration or so-called Trim-a-Tree sections of department, variety, and other stores.

The C–9 bulb is designed for use, and is primarily used, outdoors. However, it is frequently used indoors in shopping centers, malls, banks and display areas to decorate large trees and other objects. Thus it is promoted as both an outdoor and indoor lamp. The C–7 bulb, on the other hand, is primarily used indoors for decorating Christmas trees and is concededly a "Christmas-tree lamp" within the meaning of item 686.30.

Over 95 percent of all C–9 and C–7 lamps are used in Christmas light strings which consist of: A length of wire with a plug at one end to connect the wire to a power source; a series of individual sockets spaced between 12 and 15 inches apart; and a device at the other end to enable the string to be connected to another string. Each of the sockets on the string is designed to hold a Christmas lamp; in addition, each socket contains a hook, clip or bead to allow the light string to be attached to a Christmas tree branch.[4] The light string with which the C–9 bulb is used is made of 18-gauge wire which is thicker and of higher wattage than the 20-gauge wire used with the C–7 lamp string set, and for that reason the C–9 bulb is the only Christmas lamp approved by the Underwriters' Laboratories (UL) for outdoor as well as indoor use.[5] However, both the C–9 and C–7 bulbs are con-

(Continued)

Christmas trees; (2) Frank L. Kams, a vice president of Noma World Wide, Inc., a manufacturer and importer of Christmas decorations; (3) Howard W. French, a commercial representative for various firms in the Christmas decoration field, including the plaintiff company; (4) Max Fradkin, a vice president of New York Merchandise Co. which, among other things, imports and manufactures Christmas tree light bulbs and decorations; and (5) Ralph Kayser, production manager for the plaintiff company for the past four years and, prior to that, president of the Hy-Glow Company whose business is manufacturing, importing and distributing Christmas lights.

Defendant called as witnesses: (1) K. Miyamoto, vice president of merchandising for Moskatels, Inc., a seven-store California retail chain establishment, whose business includes Christmas decorations, craft supplies, artificial flowers, and florist supplies; and (2) Lou Lehmann, a Christmas product and marketing specialist of the General Electric Company, in which capacity he is responsible for the design, application, marketing and advertising of General Electric's complete Christmas product line of light bulbs and sets.

[4] The decoration of eaves, doorways and windows requires special clips which are affixed to the outside of a house so that the light string wires can be hung from them.

[5] The Underwriters' Laboratories is a non-profit organization established by insurance companies to prescribe safety standards for various electrical items.

structed with flange seals, and both, therefore, are waterproof. Accordingly, while the C–7 can be used outdoors, it lacks UL approval therefor because the 20-gauge wire in the light string with which it is used does not meet the requisite UL standards. Aside from that, the C–7 bulb has a smaller base and envelope than the C–9 bulb and thus will not fit into a C–9 socket. Both sizes are standard throughout the industry.

All the witnesses agreed that the C–9 bulbs were used for decorating trees, shrubs, eaves, doorways and windows of homes. However, there was no such agreement as to their predominant use. Three of plaintiff's witnesses testified that from their observations the predominant use of the imported C–9 bulbs was to trim houses. Of the two remaining witnesses for plaintiff, one testified that the use of the C–9 on trees was "infinitesimal," while the other, the general manager of plaintiff's decoration department, stated that no one use outdoors predominated over any other. By contrast, defendant's witness, the Christmas product marketing specialist of General Electric, testified that the principal use of the C–9 bulbs was outdoors as Christmas decorations on trees and shrubs.

As for terminology, the witness Scott, the general manager of plaintiff's decoration department, testified that his firm did not refer to C–9 bulbs as "Christmas tree lights" but rather referred to them as "Christmas lamps." In support of this testimony, it was shown that the company's regular boxes referred to C–9 bulbs as "Outdoor Christmas Lamps" and to C–9 bulb and light string sets as "Weatherproof Outdoor Lights." However, on cross-examination, it was brought out that from time to time plaintiff packaged C–9 bulb and light string sets in boxes which were captioned "Holiday *Tree* Lights For Outdoor and Indoor Use." [Emphasis added.]

Another witness for plaintiff, Max Fradkin, a vice president of New York Merchandise Co., which sells between 20 and 25 milllion C–9 bulbs a year, testified that the C–9 and C–7 bulbs handled by his company were usually referred to as outdoor or indoor lamps and not as Christmas tree lamps. That nothwithstanding, the witness described his firm as an importer and manufacturer of *"tree lights."* R. 129. [Emphasis added.] He further testified that it was his responsibility to "purchase the *Christmas tree light bulbs* and decorations for New York Merchandise Company as a whole." R. 131. [Emphasis added.] Also, it was brought out that the witness' company packaged its C–9 bulb and light string sets in boxes bearing the caption *"Christmas Tree Lite* – 25 Light Multiple Set." [Emphasis added.]

The other three witnesses called by plaintiff testified that the term "Christmas-tree lamp" was not frequently used in the trade to identify the C–9 or C–7 bulb. Rather, according to their testimony,

these bulbs were usually referred to as outdoor or indoor Christmas lamps.

To similar effect, the witness Lehmann, the Christmas product and marketing specialist for General Electric, testified that General Electric in its advertising and marketing did not refer to either the C–7 or C–9 bulb as a "Christmas-tree lamp." He added that the word "tree" was dropped merely for abbreviation purposes but emphasized that in industry parlance, in referring to C–7 or C–9 lamps, the terms "Christmas-tree lamps" and "Christmas lamps" are one and the same.

The remaining witness for defendant, a vice president for merchandising of a retail chain establishment which deals in Christmas decorations, testified that in his trade both the C–7 and C–9 bulbs were known as Christmas tree lamps.

II

Against this background, it must be concluded that plaintiff has failed to overcome the presumption of correctness attached to the government's classification under item 686.30 in that it did not establish that the *class* or *kind* of merchandise imported was not chiefly used on Christmas trees.

Under the provisions of general interpretative rule 10(e)(i), "a tariff classification controlled by use (other than actual use) is to be determined in accordance with *the use* in the United States at, or immediately prior to, the date of importation, *of articles of that class or kind* to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;" [emphasis added].

After reviewing the entire record, the conclusion is inescapable that the C–9 lamps here in issue are of the same class or kind as the C–7 lamps. First of all, it is clear from the record that the C–7 and C–9 lamps were marketed and sold in the same manner during the Christmas season and through the same channels of distribution. The record also establishes that the predominant use by far (i.e., over 95 percent) for both C–7 and C–9 lamps is in Christmas lighting strings for decorative purposes at Christmastime. In this connection, it is to be noted (as mentioned previously) that each socket of a Christmas lighting string contains a hook, clip or bead to allow the light string to be attached to a Christmas tree branch. Further, both the C–7's and the C–9's belong to the same product line and were displayed, advertised and uniformly referred to in the same manner. Thus, in the six catalogues in evidence, the C–7 and C–9 bulbs were without exception listed on the same pages and uniformly characterized in the same way as "Christmas lamps" or "Christmas lights" or "Christmas tree lights" or "replacement lamps" or "replacement

bulbs." Moreover, except for size, both the C–7 and C–9 bulbs were constructed in the same manner, and each had the same kind of flange seals to render them waterproof. It is true that the C–9 bulb is primarily used outdoors, while the C–7 is primarily used indoors. But this is due not to any difference in the construction of the bulbs but rather to the difference in the gauge of the wire of the light string with which the bulbs are used. In other words, it is not the bulb which distinguishes its use indoors or outdoors but the light string with which the bulb is used. Then, too, regardless of the place of use, both plaintiff's and defendant's witnesses agreed that the decorative effect of the C–7 and C–9 lamps is the same. Thus, considering the record and the characteristics of the merchandise itself,[6] the C–7 and C–9 lamps belong to the same class or kind of articles. That class or kind of articles comprises lamps which are used primarily in Christmas lighting string sets for decorative purposes, as opposed to other types of light sets.

In the foregoing circumstances, it was incumbent upon plaintiff to establish that the predominant use of the class as a whole, i.e., C–7 and C–9 lamps combined, was not for the decoration of Christmas trees. In this regard, it is important again to observe that the C–7 lamps are concededly "Christmas-tree lamps." This being the case, even though it were to be assumed that plaintiff had proven that the C–9 lamps *per se* were not chiefly used to decorate Christmas trees, this would still not be sufficient to overcome the presumption of correctness attendant upon the government's classification. For plaintiff has failed to establish that the class of articles as a whole—which includes both the C–7 and C–9 lamps—was not chiefly used on Christmas trees. The fact is that on this score, plaintiff presented no evidence whatever, let alone evidence as to the total size of the class, or the percentage breakdown between C–7 and C–9 lamps within that class.

Plaintiff, however, argues that in *The Hy-Glow Company et al.* v. *United States*, 58 Cust. Ct. 481, 486, C.D. 3023 (1967) this court recognized that C–9 lamps are a class or kind of article separate from the C–7 lamps. However, there is nothing in that decision to show that the class or kind issue was ever argued or considered by the court in rendering its decision. The *Hy-Glow* case was concerned with the correct classification of Christmas light bulbs, which included C–6, C–7, and C–9 lamps. The lamps were classified by the collector under a provision of paragraph 229 of the Tariff Act of 1930, as modified, which covered "miniature Christmas tree lamps." Plaintiff claimed that the importations were dutiable under the same paragraph of the

[6] See e.g., *United States* v. *Colibri Lighters*, 47 CCPA 106, 109, C.A.D. 739 (1960); *United States* v. *The Baltimore & Ohio R.R. Co.*, 47 CCPA 1, 3, C.A.D. 719 (1959).

Tariff Act, as modified by a trade agreement, which reduced the duty on electric light bulbs and lamps, with the exception of "miniature Christmas tree lamps." Plaintiff claimed the imported lamps were not of the "miniature Christmas tree" type and hence were dutiable at the lower rate prescribed by the trade agreement. The court sustained the collector's classification on the ground that the importations came within the common meaning of the term "miniature lamps."

The court also rejected plaintiff's alternative argument that the imported articles were not chiefly used as Christmas tree lamps. As to this, the court noted (1) that plaintiff's own witness admitted that C–7 lamps were used mostly on Christmas trees; and (2) that with respect to the C–9 lamps, neither the testimony of plaintiff's witness nor the samples gave rise to a prima facie showing of chief use. It is quite true that on this phase of the case, the court in *Hy-Glow* considered the C–7 and C–9 lamps separately with regard to the Christmas tree lamp issue. But this hardly can be regarded as dispositive of the issue here as to whether the C–7 and C–9 lamps are of the same class or kind since that issue was neither argued nor considered by the court in *Hy-Glow*.

III

Lastly, it is to be noted that this court has indicated that item 686.30 covering "Christmas-tree lamps" is an *eo nomine* provision.[7] *Mobilite, Inc.* v. *United States*, 70 Cust. Ct. 359, 365, C.R.D. 73–11, 358 F. Supp. 267, 272 (1973).[8] Considering item 686.30 to be an *eo nomine* provision, the common meaning of the term "Christmas-tree lamps" becomes relevant.

On this aspect, both plaintiff's and defendant's witnesses testified that in the industry C–7 and C–9 lamps were only occasionally referred to as "Christmas-tree lamps"; instead, they were usually referred to as Christmas lamps (with the word tree omitted); or as indoor or outdoor lamps; or merely as C–7's or C–9's. But regardless of the terms used to describe these lamps, it is conceded that the C–7 lamp is a type of lamp that is properly classifiable under the provision for "Christmas-tree lamps." In other words, even though the C–7 is a "Christmas-tree lamp" it was not usually so referred to in the industry.

The fact, however, that C–7 lamps, as well as C–9 lamps, were not usually referred to as Christmas-tree lamps does not mean that they were not commonly *known* as such. Indeed, plaintiff's witness Fradkin,

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[7] It will be recalled that in the pleadings in the present case the parties have taken a different position, agreeing that item 686.30 is a use provision.

[8] Similarly, paragraph 218(f) of the Tariff Act of 1930, as modified, covering "Chirstmas tree ornaments" was held to be an *eo nomine* provision. *Gallagher & Ascher Company* v. *United States*, 57 Cust. Ct. 348, 352, C.D. 2813 (1966).

vice president of New York Merchandise Co.—which (as noted before) sells in excess of 20 million C–9 bulbs a year—admitted that such bulbs were always known to customers as Christmas tree lights. See R. 147–148.[9] Likewise, defendant's witness Miyamoto testified that in the retail trade both the C–7 and C–9 bulbs were known as Christmas tree lamps. Further, defendant's witness Lehmann testified that so far as General Electric was concerned the word "tree" was dropped from its advertising merely for abbreviation purposes but emphasized that in the industry, when referring to C–7 or C–9 lamps, the terms "Christmas-tree lamps" and "Christmas lamps" are one and the same.

Bearing mention too is the fact (1) that the New York Merchandise Co. packaged its C–9 bulb and light string sets in boxes bearing the caption *"Christmas Tree Lite* – 25 Light Multiple Set" [emphasis added]; and (2) that plaintiff itself from time to time packaged such sets in boxes captioned "Holiday *Tree* Lights For Outdoor and Indoor Use." [Emphasis added.]

Pertinent also is the following quotation from *The Underwriters' Laboratories, Inc. Electrical Appliance and Utilization Equipment List* (May 1968), p. 73:

> CHRISTMAS-TREE AND DECORATIVE-LIGHTING OUTFITS (60 HO)
>
> In listing Christmas-tree and decorative-lighting outfits, it is assumed that any medium-base, *intermediate-base, candelabra-base,* or miniature-base *lamps* to be used in these devices are made in accordance with United States of America Standard specifications, whether or not the lamps are actually supplied with the set or are inserted in the lampholders. The use of lamps which are not in conformance with such standards may present shock hazards or high temperature conditions which are in excess of safe limits of operation. [Emphasis added.]

Recalling that the C–9 bulb is an intermediate-base lamp and the C–7 a candelabra-base lamp, it is obvious that according to the Underwriters' Laboratories both types are used in "Christmas-*Tree* * * * Lighting Outfits." [Emphasis added.] This being the case, since the C–7 bulb is concededly a "Christmas-tree lamp" used in a Christmas-*tree* lighting set, it necessarily follows that the C–9 bulb which is used in the identical way is likewise considered by the Underwriters' Laboratories to be a "Christmas-tree lamp."

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[9] As discussed previously, it is interesting to note that although Fradkin testified that the C–9 and C–7 bulbs handled by his company were usually referred to as outdoor or indoor lamps and not as Christmas tree lamps, Fradkin described his firm as an importer and manufacturer of *"tree lights"* and stated that it was his responsibility to "purchase the *Christmas tree light bulbs"* for his company as a whole. See R. 129, 131.

Further relevant is the following excerpt from Tariff Commission Report No. 133, *Incandescent Electric Lamps* (2d series, 1939), pp. 27–28:

> *Miniature lamps of standard types.*—Classified by methods of manufacture, miniature lamps are of two main types: (1) flange-seal and (2) butt-seal. Flange-seal lamps are similar to large lamps in that the bulbs are sealed around the flange of the mount, whereas in butt-seal lamps the lead-in wires are sealed in a glass bead * * *. Flange-seal lamps include automobile headlight lamps, most of the miniature sign and decorative lamps, *and the larger Christmas-tree lamps designed for outdoor use.* * * * [Emphasis added in part.]

It is apparent that the Commission in referring to the miniature, flange-seal, larger, *Christmas-tree lamps designed for outdoor use* was making reference solely to the C–9 bulb. For as the record shows, this is the only bulb in the industry that fits the above description.

IV

For the foregoing reasons, it is held that plaintiff has failed to overcome the presumption that the imported C–9 bulbs were properly classified by the government under item 686.30 of the tariff schedules as "Christmas-tree lamps." Therefore, plaintiff's claim is overruled and judgment will be entered accordingly.

(C.D. 4586)

NOEL R. CHAPIN COMPANY *v.* UNITED STATES

Administration (marking duties)

MARKING OF CONTAINERS—IDENTITY OF ULTIMATE PURCHASERS—INSUFFICIENCY OF EVIDENCE

Non-glare glass imported at Los Angeles from Japan in 1968 and 1969 was assessed with marking duties under 19 U.S.C.A., § 1304(c) in liquidation, and it is claimed by the importer that the assessment of marking duties was illegal.

The record shows that the containers in which the glass was imported were marked with the country of origin (Japan) but that the glass itself was not so marked, that the glass is chiefly used in the custom picture framing business, that it was the importer's policy to sell the imported glass only to custom framers in the original, unopened containers and usually in five (5) case lots, and that at least some of the glass imported was resold by customers of the importer in over-the-counter transactions involving the sale of individual panes of glass. Plaintiff did not offer any evidence on the subject of customer usage and sales regarding the imported

glass which was introduced into the record. Also, the importer was precluded from giving such evidence by reason of non-compliance with the terms of a discovery order.

HELD, in the absence of evidence of customer usage and sales of unmarked merchandise imported in bulk in marked containers such as that at bar the identity of the ultimate purchasers of such merchandise cannot be determined where as here the importer is not a consumer of the imported merchandise. In such a case the action must be dismissed for insufficiency of evidence.

Court No. 72-5-01053

Port of Los Angeles

[Dismissed.]

(Decided February 19, 1975)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of panes of non-glare glass in varying sizes exported from Japan, entered at Los Angeles-Long Beach, California, between June, 1968 and December, 1969, and assessed, in addition to ordinary duties, with a 10 percent marking duty pursuant to 19 U.S.C.A., section 1304(c) (section 304(c), Tariff Act of 1930, as amended by the Customs Administrative Act of 1938). The plaintiff-importer contends in this action that the glass is exempt from the marking requirements because (1) the containers were marked in a manner as would reasonably indicate to the ultimate purchaser the country of origin of the glass, and (2) an ultimate purchaser, by reason of the character of the imported glass, must necessarily know its country of origin even though it is unmarked.

The pertinent statutes read:

> § 1304. Marking of imported articles and containers.
> (a) Marking of articles.
> Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—
>
> * * * * * * *
>
> (3) Authorize the exception of any article from the requirements of marking if—
>
> * * * * * * *

(D) The marking of a container of such article will reasonably indicate the origin of such article;

* * * * * * *

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

* * * * * * *

(c) Additional duties for failure to mark.

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of duty provided for in this subsection shall be reimbursed to the Government by the importer.

And section 11.10(a) of the Customs Regulations [as revised January 1, 1968] reads in relevant part:

(a) Articles within any specification in section 304(a)(3), Tariff Act of 1930, as amended, are hereby excepted from the requirement of marking. The marking of the container of an article will reasonably indicate the origin of such article within the meaning of section 304(a)(3)(D) if the article is imported (or repacked under section 562, Tariff Act of 1930, as amended) in a container which will reach the ultimate purchaser in the United States unopened. . . .

In the pleadings it is admitted that the containers in which the glass was imported were clearly marked with the country of origin [in this case Japan], and also that non-glare glass is wholly or chiefly used in picture framing. And plaintiff concedes that the individual panes of glass were not marked with the country of origin. Thus, the primary consideration underlying the issues raised under section

1304(a) is the identity of the *ultimate purchaser* or *purchasers* of the imported glass.

The record in the case consists of the testimony of six witnesses, glass samples, documentary exhibits, and the official papers. On the matter of the *ultimate purchaser* the record shows that the plaintiff-importer is a supplier of mouldings, hardware, paper products, machinery, tools, and glass to custom framers, among others. George A. Reynolds, a salesman for the plaintiff since 1967 and the only witness called on plaintiff's behalf, testified that he sold some of the imported non-glare glass to custom framers mostly from Santa Monica south to the border and east into Las Vegas and to Yuma on the south, in the original, unopened containers, a sample of which is depicted in the photograph designated as exhibit 3. The witness' sales did not encompass the entire shipments involved herein. However, he testified that it was plaintiff's policy only to sell the glass to custom framers, in the original, unopened containers and usually in five (5) case lots.

But John A. Jones of Hollywood, California, a salesman in the employ of Smith Hardware Company since 1965, testified that he sold non-glare glass over the counter to customers, that this was the only way in which Smith Hardware Company sold this glass, and that according to the name appearing on the case in which the glass was purchased by his company it came from the plaintiff, although it was acquired directly from Chet Siler, a custom framer. [The name Smith Hardware Company of Los Angeles, Calif. appears on a list compiled by plaintiff for the customs service and said to represent purchasers of the imported glass (exhibit A).] And it was developed in testimony elicited from another witness, Michele Schiffman, that four of the other firms whose names appear on exhibit A made over-the-counter sales of individual panes of such glass without identifying marks of origin to customers who sought to buy just the glass itself.

The plaintiff, of course, is not a consumer of the subject glass. Consequently, in the light of the foregoing testimony concerning sales of the glass *per se*, overall evidence of customer usage and sales becomes essential to the determination of the identity of the ultimate purchaser or purchasers in this case. See and compare, *Grafton Spools, Ltd.* v. *United States*, 45 Cust. Ct. 16, C.D. 2190 (1960), and *The Diamond Match Company* v. *United States*, 49 CCPA 52, C.A.D. 796 (1962).

In C.D. 2190, involving unmarked, empty ribbon spools imported from England in cases marked with the country of origin, the customs court said (pp. 23–24):

> There is no easy general rule that can be laid down by the court as to who is an ultimate purchaser, applicable to all cases

> where unmarked goods are imported in bulk in marked containers. The question in each case, on the facts there before the court, is whether the purchaser of the marked unopened container is the ultimate purchaser of the contents, that is, the imported unmarked merchandise. If he is the ultimate purchaser, the terms of the statute are satisfied. If he is not the ultimate purchaser of the merchandise, then the terms of the statute may not be satisfied, and further inquiry as to the applicability of exceptions may then be necessary.

In that case the court held, among other things, that manufacturers of business machines that utilized the empty spools were the ultimate purchasers of the spools they received in marked, unopened containers. In this connection, the court said (p. 24):

> . . . There is no showing that the empty spools, as such, are thereafter an article of commerce in the United States. . . .

In C.A.D. 796, involving unmarked, wooden spatulas in packages of 50 held together by a paper band on which was marked the words "Made in Japan", the legal sufficiency of this marking was sustained upon evidence that the imported spatulas actually reached the ultimate purchasers, i.e., arts and crafts customers and manufacturers of ice-cream-on-a-stick, in marked, unopened containers, and that they were not sold individually. In this connection the majority in our appeals court stated with respect to the arts and crafts customers who comprised only a small percentage of the users of this merchandise [½ of one percent] (p. 59):

> . . . there is no evidence that any of them reached the purchasing consumer in any form other than in unbroken, marked packages of 50. We therefore affirm the Customs Court's holding that the marking of a paper band container of 50 spatulas in such cases falls within the purview of Customs Regulation 11.10 and would "reasonably indicate the origin of such articles within the meaning of section 304(a)(3)(D) * * * [because the containers] * * * will reach the ultimate purchasers in the United States unopened."

In marked contrast to the evidence before the courts in C.D. 2190 and C.A.D. 796, the aforementioned testimony in the instant case discloses a further introduction into the commerce of the United States of the imported glass by some if not all of the plaintiff's customers, and the sale of individual panes of glass by some of them.

The plaintiff argues that all of its customers were "ultimate purchasers" of the glass in question, whether they used it to make custom frames or cut it to size to sell to their customers of non-glare glass. Cutting to size and selling to customers does not constitute a process of manufacture of a new article so as to comply with the

marking exception provided in section 304(a)(3)(D) of the Tariff Act, as amended, and Customs Regulation 11.10.

Plaintiff did not produce evidence of customer usage and sales. Under the terms of a discovery order entered herein on March 20, 1974, the plaintiff was required to furnish defendant with the names and business addresses of the individuals who purchased the imported glass from it and the quantity of glass received by each purchaser, in default of which plaintiff would be precluded from introducing evidence at the trial on the subject of customer usage and sales of the imported glass. Plaintiff furnished defendant with a customer listing pursuant to the terms of said discovery order, but failed to furnish in this listing information concerning the quantities of glass delivered to its customers. Plaintiff is, therefore, in partial default under the terms of the said discovery order.

In the absence of evidence of customer usage and sales plaintiff cannot succeed in identifying the ultimate purchaser or purchasers in relation to any importation of glass involved in this case. As counsel for the defendant aptly observes in the brief (pp. 13–14), ". . . the record at bar indicates that the importer has no knowledge as to the consumption of the *subject* merchandise, or generally, as to the volume of non-glare glass that was subsequently resold over-the-counter by the plaintiff's purchasers . . . ." As such, there is a fatal defect in the proofs tendered by plaintiff under the issues before the court. The plaintiff has offered no evidence as to the identity of the ultimate purchasers of the merchandise which was *actually imported* in the entries at bar. It follows that the action herein must be dismissed for insufficiency of evidence.

Judgment will be entered herein accordingly.

(C.D. 4587)

PUBLICKER INDUSTRIES, INC. *v.* UNITED STATES

Minerals

SILICA BALLS—NOT IMPREGNATED WITH ACID—DUTY FREE

Merchandise described on an invoice as "earth argillaceous", imported at Philadelphia from West Germany in 1968 and 1969, and classified as mineral substances, and articles of mineral substances, not specially provided for, not decorated, and other than crude mineral substances, under TSUS item 523.91, is claimed by the importer to be classifiable as silica, not specially provided for, under TSUS item 523.11, free of duty.

Evidence adduced at the trial and post-trial concessions made by the government establish that the imported merchandise consists of silica balls which were not impregnated with phosphoric acid at the time of importation.

Held, the imported merchandise is classifiable as claimed by the importer.

Port of Philadelphia

Court No. 72-2-00441

[Judgment for plaintiff.]

(Decided March 6, 1975)

Sharretts, Paley, Carter & Blauvelt (*Patrick D. Gill* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case, described on the commercial invoice as "earth argillaceous" and imported at the port of Philadelphia, Pa. from West Germany in December, 1968 and February, 1969, was classified in liquidation under TSUS item 523.91 as modified by Presidential Proclamation 3822 as mineral substances, and articles of mineral substances, not specially provided for, not decorated, and other than crude mineral substances, at the rate of 13 or 12 *per centum ad valorem*, depending upon date of entry. It is claimed by the plaintiff-importer, a manufacturer of ethyl alcohol, in this action following the denial of its administrative protest that the merchandise should be classified as silica, not specially provided for, under TSUS item 523.11, free of duty.

It was conceded by the defendant in interrogatories taken at the instance of the plaintiff and received in evidence at the trial that if the imported silica balls were not impregnated with phosphoric acid at the time of importation then they should be classified as claimed herein, and further, that the bases for classification of the merchandise covered by the entries the subject of this action were customs laboratory reports relating to merchandise of prior importations made by the plaintiff, no tests having been made by the government on merchandise covered by the entries involved in this action. Thus, the issue in the case is whether the imported merchandise, which are silica balls, was impregnated with phosphoric acid at the time of importation.

At the trial plaintiff called one witness, Sidney Goldstein, vice president of Publicker Industries, Inc., in charge of engineering and production and a graduate chemical engineer who has been associated with the plaintiff for over 30 years. He demonstrated how one could

determine whether or not silica balls have been impregnated with phosphoric acid, by putting a catalyst pellet on your tongue and if the taste is sour it has been impregnated. If the taste is "dry" or "tasteless" the silica balls are without phosphoric acid.

He identified and taste tested samples taken from plaintiff's exhibits 2 and 3 which consisted of silica balls without acid and silica balls with acid respectively (R. 14–18). Exhibit 2 was from one of the last four shipments of the merchandise in issue, which consisted of silica balls without acid, and exhibit 3 was from one of the first two shipments which contained phosphoric acid. If the silica balls do not contain phosphoric acid alcohol would not be produced. He testified that in order to cut his company's costs he began to import the silica balls and impregnate them with domestically produced phosphoric acid, which was cheaper than German phosphoric acid. Plaintiff introduced into evidence eight (8) exhibits. Defendant called one witness, namely, Frederick J. Pantella, senior import specialist at the port of Philadelphia in charge of the chemicals line, and who examined the merchandise in issue and made advisory classifications thereon. Defendant introduced into evidence five (5) exhibits. Subsequent to the trial plaintiff filed a twenty (20) page brief. Defendant responded with a statement seeking to be relieved from filing a brief.

In its statement defendant asserts, among other things:

> After reviewing the plaintiff's brief and the evidence submitted at trial, the defendant concedes that plaintiff has established the factual basis for its claimed classification of the imported materials, described in the invoices as "earth arigillaceous", under item 523.11, TSUS, as silica not specially provided for.

In view of the evidence of record and the defendant's concessions, the court finds that the merchandise in issue is in fact silica balls which were not impregnated with phosphoric acid at the time of importation. It follows, therefore, that the complaint is sustained by the evidence. As such, the imported merchandise is entitled to duty free entry under TSUS item 523.11.

Judgment will be entered herein accordingly.

(C.D. 4588)

ARTHUR J. HUMPHREYS, INC. *v.* UNITED STATES

Wood products

Classification of western red cedar fence sections, fence posts, gates, corner adaptors and cleats *held* entitled to entry free of duty under the provisions of item 200.60, Tariff Schedules of the United

States, for the posts and under item 200.75, Tariff Schedules of the United States, for the balance of the imported merchandise.

In order to determine legislative intent and meaning of the terms utilized, the court may resort to legislative history. *Harrison* v. *Northern Trust Co.*, 317 U.S. 476 (1943); *United States* v. *American Express Company*, 57 CCPA 100, C.A.D. 985, 426 F. 2d 383 (1970).

The gates, cleats and corner adaptors fall within item 200.75, Tariff Schedules of the United States, when viewed with explanation contained in the legislative history indicating said provision is "limited to materials which have been so processed physically as to dedicate them in a practical, commercial sense to fence construction, and would not include lumber merely cut to length."

The explanation in the legislative history as to what constitutes pickets, palings and rails brings the imported fence sections within item 200.75, *supra*.

Reliance on the headnotes of subpart B of schedule 2, part 1, particularly 2(d) which defines "drilled or treated" is misplaced as said headnotes are limited to subpart B as indicated by the legislative history.

The use of a pigment with an acknowledged preservative does not per se convert an article provided for in subpart A into an article provided for in subpart B.

Court Nos. 70/55211 and 70/55224

Port of Seattle

[Judgment for plaintiff.]

(Decided March 18, 1975)

Glad, Tuttle & White (*George Tuttle* and *John McDougall* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Andrew P. Vance* and *Robert B. Silverman*, trial attorneys), for the defendant.

FORD, Judge: The merchandise covered by this consolidated action consists of western red cedar fence sections, fence posts, gates, corner adaptors and cleats. The fence sections identified on the invoices as 4 x 8 and 5 x 8 western weave, 5 x 8 and 6 x 8 stockade, 5 x 8 townhouse, crisscross sections and the formal gates and stockade gates of various sizes were all assessed with duty at the rate of 11.5 per centum ad valorem under item 207.00, Tariff Schedules of the United States, as modified by Presidential Proclamation 3822, T.D. 68–9, as "Articles not specially provided for, of wood."

The fence posts, corner adaptors, and cleats were classified by customs under item 202.54, Tariff Schedules of the United States, as modified by Presidential Proclamations 3694 and 3813, T.D.'s 66–9

and 67-267, as other lumber whether or not drilled or treated and assessed with duty at 5 per centum ad valorem.

Plaintiff contends the fence posts are entitled to entry free of duty under item 200.60, Tariff Schedules of the United States, and the balance of the merchandise under item 200.75, Tariff Schedules of the United States, as wood fence pickets, palings and rails, whether or not assembled into fence sections.

The pertinent portions of the statutory provisions involved herein and their headnotes read as follows:

Tariff Schedules of the United States:

SCHEDULE 2.—WOOD AND PAPER; PRINTED MATTER

Part 1.—Wood and Wood Products

* * * * * * *

Subpart A.—Rough and Primary Wood Products; Wood Waste

Subpart A headnotes:

* * * * * * *

2. The provisions for wood products in items 200.60 (poles, piles, and posts), 200.65 (laths), 200.75 (fence pickets, palings, and rails), 200.80 (railroad ties), and 200.85 (shingles and shakes) cover such products whether or not they have been treated with creosote or other wood preservatives.

* * * * * * *

200.60	Wood poles, piles, and posts	Free

* * * * * * *

200.75	Wood fence pickets, palings, and rails, whether or not assembled into fence sections	Free

* * * * * * *

Subpart B.—Lumber, Flooring and Moldings

Subpart B headnotes:

1. This subpart covers lumber, wood siding, wood flooring, wood moldings, and certain wood carvings and ornaments, including such products when they have been drilled or treated.

2. For the purposes of this part, the following terms have the meanings hereby assigned to them:

* * * * * * *

(d) Drilled or treated: Drilled at intervals for nails, screws, or bolts, sanded or otherwise surface processed in lieu of, or in addition to, planing or working, or treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints, or enamels, but not including anti-stain or other temporary applications mentioned in headnote 4 of this subpart.

* * * * * * *

4. The treatment of lumber or other products provided for in this subpart with anti-stain or other temporary applications which serve only for the purpose of maintaining the products in their rough, dressed, or worked condition until installation or further manufacture shall not affect their classification under any of the provisions of this subpart.

* * * * * * *

Lumber and wood siding, drilled or treated; and edge-glued or end-glued wood not over 6 feet in length or over 15 inches in width, whether or not drilled or treated:

* * * * * * *

202.54	Other	5% ad val.

* * * * * * *

Subpart F.—Articles Not Specially Provided For, of Wood

Subpart F headnote:

1. This subpart covers all products of wood which are not provided for elsewhere in the tariff schedules.

207.00	Articles not specially provided for, of wood	11.5% ad val.

The record consists of the testimony of three witnesses called on behalf of plaintiff and the receipt in evidence of nine exhibits. Defendant called two witnesses and introduced nine exhibits in evidence.

Gordon Nanson was the designer of the imported merchandise and handled the manufacture and sale for North Pacific Lumber Company, the ultimate consignee herein. The witness has been in the lumber products industry since 1948 and presently operates a lumber brokerage business. The shipments of fencing in their natural form were as represented by plaintiff's exhibit 4. As the sections were manufactured as early as September and then stored for shipment until

the following February and March, the color had deteriorated. In order to overcome this, Mr. Nanson and the president of B. C. Wedge, Ltd. approached Walker Brothers Paint Co. who produced a solution which would help maintain a uniform appearance. The formula thus developed is represented by plaintiff's exhibit 9 with the exception of the phenyl mercuric acetate.

Subsequent to the use of this solution, a second problem developed in the form of green mold. Walker Brothers Paint Co. then developed an additive to the solution already used, i.e., phenyl mercuric acetate to suppress the growth of the green mold.

Lawrence Storey of Walker Brothers Paint Co. testified he developed a solution which controlled water marking and which retarded the leaching action which is normally associated with the aging of cedar. This treatment produced a color similar to plaintiff's exhibit 3. The problem of green mold subsequently encountered resulted in the experimentation with five or six formulas being developed in collaboration with Western Forest Products Laboratory. The final formula is that contained in plaintiff's exhibit 9. The color imparted to the material was similar to plaintiff's exhibits 1 and 2.

Mr. Storey agreed with the definition of wood preservative contained in the book *Wood Preservation* by Hunt and Garrett which states as follows:

> Wood preservatives are chemical substances that, when suitably applied to wood, make it resistant to attack by fungi, insects, or marine boras.

In his opinion the definition describes the treatment of the western red cedar with the formula he developed as it controlled biological mold growth. Stains may be either transparent or opaque using a linseed oil creosote or latex base. A stain is a preservative to the extent that it prevents degradation of the wood caused through ultraviolet light.

A linseed oil or creosote stain, according to the witness, would constitute a certain amount of water repellency and tend to prevent or retard leaching of extractives by water whereas the stain involved herein would only nominally do so because the film is very thin. The stain developed was a concentrate which was to be diluted with five parts of water. The solution was stored in a large tank and the various sections were hand-dipped, drained and dried. The witness agreed with the definition of preservative contained in the *U.S. Department of Agriculture Handbook 27* published by Forest Products Laboratory which provides as follows:

> Any substance that for a reasonable length of time is effective in preventing the development and action of wood-rotting fungi

boras, of various kinds, and harmful insects that deteriorate wood.

Mr. Storey was of the opinion the formula involved is a preservative because it controlled biological growth, i.e., mold, to acceptable levels. The pigment added also absorbed ultraviolet light which prevented the breakdown of wood cells and hence acted as a preservative.

Dr. Harvey Erickson, a professor of wood science and technology at the University of Washington, testified that a wood preservative is a substance with the capability to protect wood from deterioration caused by various forms of attack such as fungi, insects and marine boras as well as bacterial deterioration including micro-organisms and physical and chemical deterioration.

Dr. Erickson testified that preservation means to maintain intact or to protect the integrity of wood. A definition which does not mention bacteria is an old definition. A wood preservative, according to Dr. Erickson is a chemical which prolongs the surface life of wood products, protecting the wood from degradation through biological, physical or chemical agents. The formula developed by Mr. Storey is an example of a wood preservative within the understanding of Dr. Erickson. Growth of green mold is a form of wood deterioration as is color change.

Dr. Steven Fike, a chemist with the U.S. Customs Laboratory at San Francisco, testified that he made an analysis of the components of plaintiff's exhibit 9. The formula in his opinion is a polyvinyl latex stain with phenyl mercuric acetate. The latter in the formula prevents the growth of fungi. The burnt umber and red oxide in the formula act to block out ultraviolet light and protect against deterioration as well as adding color. Dr. Fike further testified as to the properties of western red cedar and as to various experiments performed by him with the solution.

Mr. Donald Laughnan is a specialist in coating for the Simpson Timber Co. He spent 22 years with the U.S. Forest Products Laboratory. The witness testified as to the qualities of western red cedar. He did not believe plaintiff's exhibit 3 was treated with a solution which met the definition of a preservative as contained in the wood handbook. The percentage of the phenyl mercuric acetate is not, in his opinion, sufficient to protect against wood-rotting fungi, boras or harmful insects.

Based upon the record and the admission by defendant in its answer with respect to paragraph 7, there is no issue as to whether the imported articles are fencing and posts. Defendant however contends the fence sections particularly the western weave, exhibit 1, and stockade, exhibit 2, as well as the gates, cleats and corner adaptors, are not within the ambit of item 200.75, *supra*, which provides for

"fence pickets, palings, and rails." Additionally defendant contends that the so-called "treatment" of the wood does not constitute a preservative since it also contains pigment which colors or helps maintain its original color.

While the parties have devoted themselves both in the trial and briefing of this matter to the question of whether or not the solution utilized in Canada was a wood preservative, the first question to be considered is whether the imported articles are within the scope of the claimed provisions. Item 200.60, *supra*, includes posts. Defendant does not contend and I so find that the posts are provided for in said item if the so-called "treatment" does not preclude classification therein. Insofar as the fence sections, cleats, corner adaptors and gates are concerned, a more complex situation is presented. This provision, item 200.75, provides for fence sections.

In order to determine the legislative intent and meaning of the terms utilized, the court may resort to legislative history to ascertain the intent. *Harrison* v. *Northern Trust Co.*, 317 U.S. 476 (1943); *United States* v. *American Express Company*, 57 CCPA 100, C.A.D. 985, 426 F. 2d 383 (1970). The Tariff Classification Study covering schedule 2, part 1, insofar as pertinent makes the following statement in its explanatory notes:

> Item 200.60 which provides for poles, piles, and posts of wood, free of duty, is derived from paragraphs 401, 1803 (1) and (2), and 1804. Certain piles of fir, spruce, pine, hemlock, and larch are dutiable under paragraph 401 at 50 cents per thousand feet, board measure, as are round timbers used for spars or for building wharves. Other piles are duty free under paragraph 1803(2), round timber, not specially provided for, and poles and posts are duty free under paragraphs 1803(1) and 1804. The present duty of 50 cents per thousand feet, board measure, imposed on certain piles under paragraph 401 is negligible (equivalent to about 0.7 percent ad valorem). Wood poles are long, slender, round timbers set upright in the ground used to support cables or wires for transmitting electric power or communications. Wood posts are round, sawed, or split stems of trees commonly 4 to 5 inches in diameter and 6½ to 7 feet long. Posts are used chiefly as fence posts for farm, highway, and railroad fencing. Wood piles are heavy round timbers, which are pointed and driven in the ground to form a foundation. Piles are used in building structures such as piers, wharves, and bridges, and as foundation piles where the timber is cut off at the ground line or below to support the foundations of large structures.
>
> * * * * * * *
>
> Item 200.75 would provide for the free entry of wood fence pickets, palings, and rails, whether or not assembled into fence sections. This provision, which is based upon paragraph 1805, would be limited to materials which had been so processed physically as to dedicate them in a practical, commercial sense to fence construction. and would not include lumber merely cut to length.

> Pickets (or palings) are narrow pieces of wood used as uprights in the fabrication of wood fences. Sawed pickets are commonly 1 by 2½ or 3 inches wide, by 3 to 4 feet in length with pointed tops. Rustic pickets consist of round or half round stakes pointed or unpointed, commonly from 1 to 3 inches in diameter and 4 to 8 feet long. Wood fence rails are long and slender, may be round, half round, quartered or rectangular in cross section, generally not exceeding 4 inches in diameter or width and approximately 8 feet in length. Rails are also used as horizontal members in fabricating post and rail-type fences.

Based upon the foregoing, the gates, cleats and corner adaptors would appear to fall within item 200.75 by virtue of the explanation that the provision is "limited to materials which have been so processed physically as to dedicate them in a practical, commerical sense to fence construction, and would not include lumber merely cut to length." All of these articles are dedicated to fencing purposes.

The explanation of what constitutes pickets, palings and rails set forth, *supra*, when considered with the construction of the imported merchandise appears to embrace the imported fence sections. Defendant's exhibits A and B offered to indicate how the merchandise was held out for sale by the importer clearly depict the construction as composed of pickets and rails. The western weave is made of weaving rails and bottom and side rails. The stockade is made of pickets and rails. The townhouse is made of vertical pickets and top, bottom and side rails. The crisscross is made of top, bottom and side rails and palings. Accordingly, based upon the exhibits and the legislative history I am of the opinion that the fence sections involved herein are within the purview of item 200.75, *supra*, if the so-called "treatment" does not remove them therefrom.

Headnote 2 of schedule 2, part 1, subpart A, covers articles provided for in item 200.75, *supra*, "whether or not they have been treated with creosote or other wood preservatives." The imported articles have not been treated with creosote but they have been treated with a product containing the following as set forth in plaintiff's exhibit 9:

18–604 B. C. WEDGE CONCENTRATE

Water	1875 Lbs.
Nopco NDW (Bubble Breaker)	20 "
Tamol 731 (Wetting Agent)	145 "
Methocel DG (Protective Colloid)	15 "
Hexylene Glycol	175 "
Burnt Umber (Synthetic)	1250 "
Red Oxide (Synthetic)	100 "
Phenyl Mercuric Acetate (Fungistat)	50 "
Poly Vinyl Acetate Emulsion	2125 "

Yield: 450 Imperial Gallons

Thin with 5 parts of Water by Volume

Based upon the formula and the record, it is apparent the product in said exhibit 9 is a polyvinyl acetate paint with the addition of a fungistat or mildewcide. In its diluted state, which is the condition in which it was applied to the imported products, it would be a stain or similar to a stain with a fungistat or mildewcide. The testimony establishes insofar as the addition of the pigment is concerned that it blocks out the ultraviolet rays which tend to cause deterioration of the wood. The fungistat or mildewcide is recognized as preventing the growth of fungus, in this instance, green mold. Defendant contends that only preservatives such as creosote which are unpigmented were intended to be included. To bolster this contention defendant relies upon headnotes 2(d), the definition of treated, and 4 (anti-stain) of schedule 2, part 1, subpart B, as well as some of the testimony presented before the Tariff Commission. The reliance by defendant on the headnotes of subpart B is misplaced. The mere fact the distinction was drawn between coating, painting, staining, etc., in subpart B, confirms the position that if applicable to subpart A, the framers would have or should have utilized the same or similar language. The intent to limit the language to subpart B is clear as indicated in the Explanatory Notes to the Tariff Classification Study in which the following statement is made:

> The term "drilled or treated" has been defined in headnote 2(d) for convenience in connection with certain rate descriptions in this subpart. Sometimes lumber, wood siding, flooring, and moldings are advanced in condition by being drilled at intervals to facilitate their installation with nails, screws, bolts, or similar fasteners, by sanding or other surface processing in lieu of, or in addition to, planing or working, or by treatment with creosote or other wood preservatives, or with fillers, sealers, waxes, stains, paints, etc. These products have been classified in the "basket" provision for wood manufactures in paragraph 412 at the rate of 16⅔ percent ad valorem; and in the overall "basket" provision for nonenumerated manufactures in paragraph 1558. The classification results are uncertain and anomalous. The representative of the domestic producers appearing at the hearing called attention to the problem and recommended the establishment of a firm provision for lumber and wood siding at a rate between the very low rates for lumber in paragraphs 401 and 1803(1) and IRC section 4551(1) and the relatively high rate in paragraph 412. In the circumstances, a provision has been added (item 202.54) reflecting the rate (10 percent ad valorem) currently applied to some of these products under paragraph 1558.

The statements of witnesses and the Assistant General Counsel before the Tariff Commission do not constitute an intent to exclude acknowledged preservatives which contain a pigment. The use of

pigment does not per se convert an article provided for in subpart A into an article provided for in subpart B. Headnote 1 of subpart B indicates said subpart covers lumber, wood siding, wood flooring, wood molding, wood carvings, etc. It is also apparent by reviewing items 202.52, 202.53, 202.54, Tariff Schedules of the United States, that the unit of quantity is "M. bd. ft." while the imported articles are sold by sections.

The Summaries of Trade and Tariff Information, Schedule 2, Volume 1, defines board foot measure at page 81 as follows:

> Lumber is measured by the board foot, a three-dimensional unit; for tariff purposes,
>
> a board foot is the quantity of lumber contained in, or derived (by drying, dressing, or working, or any combination of these processes) from, a piece of rough green lumber 1 inch in thickness, 12 inches in width, and 1 foot in length, or the equivalent of such piece in other dimensions.

In the same source at page 52, the following comment is made:

> Posts and rails are usually sold by the piece, although they are sometimes sold in unassembled lots consisting of the exact number required for a given length of fence. Lath is usually distributed in bundles of 50 pieces each. Pickets (or palings) are distributed both in unassembled lots and in the form of assembled fencing section or panels.

It is obvious from the foregoing that for tariff purposes as well as in the trade lumber is sold per M bd. ft. while posts are sold by the piece. Therefore the addition of a pigment does not convert a post to lumber for tariff purposes or in the trade and commerce of the United States. The addition of a pigment in a fungistat or mildewcide does not convert a fence section treated with it into an article not specially provided for of wood as prescribed by item 207.00, *supra*.

It is evident that item 200.75, *supra*, is more specific and would prevail over the basket provision of item 207.00, *supra*, under which fence sections, gates, etc., were classified.

I am of the opinion that the fence sections, posts, gates, corner adaptors and cleats which were treated with a pigmented preservative are properly dutiable as claimed.

Judgment will be entered accordingly.

(C.D. 4589)

EHRENREICH PHOTO-OPTICAL INDUSTRIES, INC. *v.* UNITED STATES

Opinion and Order on Cross-Motions for Summary Judgment

Court Nos. 67/83509, etc.

Port of New York

[Judgment for defendant.]

(Decided March 21, 1975)

Serko & Sklaroff (*Murray Sklaroff* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*John N. Politis*, trial attorney), for the defendant.

NEWMAN, Judge: In a word, the parties in these five consolidated actions agree that there is no genuine issue as to any material fact, and have filed cross-motions for summary judgment pursuant to rule 8.2.

The issue involves the proper tariff classification of certain stainless steel reels designed for processing still picture photographic film; namely, to hold the film during the photofinishing process. These reels were imported from West Germany through the port of New York, and assessed with duty at the rate of 19 per centum ad valorem under the provision in item 722.80 of the Tariff Schedules of the United States (TSUS) for "Photographic film reels". Plaintiff claims that the merchandise was properly dutiable at the rate of 10 per centum ad valorem under the provision in item 722.94, TSUS, for "Equipment specially designed for photofinishing (still picture): Other, not specially provided for".

I have no difficulty in concluding that the assessment under item 722.80 was correct. Accordingly, plaintiff's motion is denied; defendant's cross-motion is granted.

1.

Defendant does not dispute that the imports are specially designed for still picture photofinishing, but insists that they are specially provided for *eo nomine* under item 722.80 as "photographic film reels". On the other hand, plaintiff contends that the imports are not specially provided for as "photographic film reels" within the meaning of the provision in item 722.80.

Briefly, plaintiff argues that the provision in item 722.80 for "photographic film reels" covers only reels used to store and project

film; while defendant urges that the provision also covers reels designed for holding exposed film during the photofinishing process.

In support of its restrictive interpretation of the provision for "photographic film reels" in item 722.80, plaintiff cites *J. E. Bernard & Co., Inc.* v. *United States*, 66 Cust. Ct. 362, C.D. 4215 (1971). There, the merchandise consisted of "autoload" cartridges used in conjunction with a microfilm reader, and the court commented (66 Cust. Ct. at 365):

> First, it is evident from reviewing the lexicographic authorities that a film "reel" in its common meaning is a flanged holder on which a film is wound. (See e.g., *Webster's International Dictionary* (Second Edition, Unabridged (1948)); The National Microfilm Association's *Glossary of Terms* (1962 and 1966 eds.); *The Britannica World Language Dictionary* (1963). And this is what the importation primarily is—a flanged holder on which a film is wound—encased in a plastic container. Put otherwise, the importation performs the primary function of two conventional film reels—i.e., to store and project film—and the ancillary function of protecting such film. Further, the import is used in exactly the same way as two film reels—one empty and one full—placed side by side in a reader, with the film being unwound from the one reel and wound onto the other while being projected on the reader. And since the importation consists of two reels in one container, there is no need to rewind the film, thus effecting a reduction in look-up time. These features enable the film reels to function more efficiently and simply; they do not convert the film reels into anything else.

Thus, in *Bernard* the court found from various lexicographic authorities "that a film 'reel' in its common meaning is a flanged *holder* on which a film is wound". (Emphasis added.) The court did not rule, as urged by plaintiff, that to be "photographic film reels" within the purview of item 722.80 the reels must be used for the storage and projection of film.

In addition to the lexicographic authorities cited in *Bernard* for the common meaning of "photographic film reel", defendant here relies upon the following definitions in *The Random House Dictionary of the English Language* (unabridged edition, 1969):

> reel * * * 5. *Photog.* a. a spool on which film, esp. motion-picture film, is wound. b. a roll of motion-picture film. c. ***a holder for roll film in a developing tank.*** [Emphasis added.]

The United States Tariff Commission's *Summaries of Trade and Tariff Information*, Schedule 7, Volume 3, page 40, states: "Photographic film reels and reel cans (item 722.80) are the usual *holders* and containers for photographic film". (Emphasis added.)

Hence, there is no doubt that the common meaning of "photographic film reel" encompasses reels, such as the imports, used for *holding* exposed film in the photofinishing process.

2.

Plaintiff also contends that "the juxtaposition of the terms 'photographic film reels' and 'reel cans' [in item 722.80] creates a limitation on the former term—the limitation being only to those reels which can be associated with reel cans or their equivalent". In support of this argument, plaintiff heavily relies upon *California Oil Co.* v. *United States*, 29 Cust. Ct. 44, C.D. 1442 (1952), wherein the court construed the provision in the Internal Revenue Code for "gasoline or other motor fuel". In this connection, the court observed (29 Cust. Ct. at 48):

> The question then presents itself whether the fact that the word "gasoline" as it is used in the statute is coupled with another provision, viz, "motor fuel," by the connecting words "or other" indicates a legislative intent to limit or restrict its application only to such gasoline as is used as motor fuel—thus in effect making it a designation by use.
>
> The word "other" as used in statutes such as that here involved has a modifying force, in the sense of limitation or explanation, and it may apply that force to that which precedes it or to that which follows it. *United States* v. *American Express Co.*, 2 Ct. Cust. Appls. 95, 98, T.D. 31636. If the modifying force of the word be applied to that which precedes it, i.e., "gasoline," then the word "gasoline" as used in the statute would include only such gasoline as is of the kind and character of motor fuel. If, on the other hand, the modifying force be applied to that which follows it, i.e., "motor fuel," then the words "motor fuel" would include only such motor fuel as is of the kind and character of gasoline.
>
> In either case, however, whether the word "gasoline" be limited or explained by the words "motor fuel" or vice versa, there is a reference to gasoline only in terms of motor fuel, or as a motor fuel, and we think this is indicative of the legislative intent to confine or restrict the tax imposed upon "gasoline" only to motor fuel gasoline, i.e., gasoline used as motor fuel; in effect making it a designation by use.

Plainly, the rationale of *California Oil* is inapposite to the construction of item 722.80, TSUS. Although in that case the court held that the word *other* "has a modifying force, in the sense of limitation or explanation", here the word *and* serves merely as a conjunction connecting two coordinate provisions ("photographic film reels" and "reel cans"), without evincing any modifying force or limitative con-

notation respecting the words which precede it. Inasmuch as item 722.80 does not use the words "or other", plaintiff's misplaced reliance upon *California Oil* assumes that the court's construction of the Internal Revenue Code provision would have been the same even had the statute read: "gasoline and motor fuel". However, I think such assumption is entirely unwarranted.

Therefore, in my view the provision for photographic film reels in item 722.80 is an *eo nomine* provision without limitation. It is fundamental that, in the absence of contrary legislative intent, such an *eo nomine* provision for an article includes all forms of the article. *Knowles Electronics; J. E. Bernard & Co., Inc.* v. *United States*, 62 CCPA—, C.A.D. 1134, 504 F. 2d 1403 (1974). Since there is no evidence of contrary legislative intent, I hold that item 722.80 embraces the photographic film reels involved here.

3.

Notwithstanding that the imported articles are described in item 722.80 as "photographic film reels", I must now consider whether they are more specifically described in item 722.94. General Interpretative Rule 10(c).*

Initially, it must be observed that the provision in item 722.80 for "photographic film reels" is an *eo nomine* designation by use (viz., reels *used* for photographic film), while item 722.94 is a use provision qualified by a "not specially provided for" clause. "It has been repeatedly held by this court [Court of Customs and Patent Appeals] that, subject to clearly shown contrary legislative intent, a 'not specially provided for' clause in a use provision excludes therefrom articles enumerated elsewhere by descriptive or *eo nomine* designation". *United States* v. *Lansen-Naeve Corp.*, 44 CCPA 31, 33, C.A.D. 632 (1957). Consequently, since the *eo nomine* provision for photographic film reels in item 722.80 *specially provides for the reels in issue*, they are excluded from classification under the residual provision for equipment specially designed for photofinishing *not specially provided for* in item 722.94.

In summary, I find there is no genuine issue of fact to be tried in these cases, and that the merchandise was properly classified by the regional commissioner. Hence, it is hereby ordered that the cross-motion of defendant for summary judgment is granted; and plaintiff's motion is denied. Judgment will be entered accordingly.

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*Rule 10(c) provides, so far as pertinent:

"10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; * * *".

(C.D. 4590)

GENERAL FREIGHT SERVICES, INC., A/C LAMB-WESTON, INC. *v.* UNITED STATES

Court No. 69/34481-10194

LAMB-WESTON, INC. *v.* UNITED STATES

Court No. 69/38803-10256

NORTH PACIFIC CANNERS & PACKERS, INC. *v.* UNITED STATES

Court No. 69/11593-9717

Vegetables

Frozen Onions—Reduced in Size

Frozen onions, imported with roots, tops and outer layer of skin removed, and classified under item 138.00 providing for onions "cut, sliced, or otherwise reduced in size" held properly classifiable under item 136.91 providing for frozen onions "not reduced in size" since the record showed that in both the United States and the country of exportation the roots, tops, and outer skin of such onions were virtually always removed as an incident of placing them in a marketable condition.

Port of Portland, Oregon

[Judgment for plaintiffs.]

(Decided March 31, 1975)

Glad, Tuttle & White (*Jonathan K. Bellsey* of counsel) for the plaintiffs.

Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

MALETZ, Judge: These three jointly tried actions concern the proper dutiable status of quick frozen silverskin onions imported from Holland in 1968 and 1969 via the port of Portland, Oregon. The onions were classified by the government under item 138.00 of the tariff schedules which provides for "Vegetables, fresh, chilled, or frozen, and cut, sliced, or otherwise reduced in size (but not otherwise prepared or preserved)," and assessed with duty at the rate of 17.5% ad valorem. They are claimed by plaintiffs to be properly dutiable at 1.75 cents per pound under item 136.91 which, in conjunction with its superior heading, covers "Vegetables, fresh, chilled, or frozen (but not reduced

in size or otherwise prepared or preserved): * * * Onions: * * * Other."

For purpose of greater clarity, the provisions of the tariff schedules in issue are reproduced below:

Classified under:

138.00	Vegetables, fresh, chilled, or frozen, and cut, sliced, or otherwise reduced in size (but not otherwise prepared or preserved)----------	17.5% ad val.

Claimed under:

	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):	
	* * * * * * *	
	Onions:	
	* * * * * * *	
136.91	Other----------	1.75¢ per lb.

The sole issue in these actions is whether or not the onions at bar have been "reduced in size" within the intendment of item 138.00 and the superior heading to item 136.91.

I

The record in the present case includes (1) the record in *North Pacific Canners and Packers* v. *United States*, 64 Cust. Ct. 551, C.D. 4034 (1970) which was incorporated herein; (2) plaintiffs' interrogatories and defendant's cross-interrogatories propounded pursuant to commissions to Cornelis van den Doel of Holland and his responses thereto (van den Doel was the president during the time pertinent here of A. Zwanenburg & Co. N.V. of Holland, which grew, harvested, processed and exported the onions at bar); and (3) the testimony of defendant's witness, Cornelius Rietveld of Kouts, Indiana, who had been in the onion farming business for some 40 years, had been growing silverskin onions regularly since 1965, and was at one time in the onion processing business.

Mr. van den Doel's replies to interrogatories and cross-interrogatories in this and the incorporated case may be summarized as follows: The imported onions, as harvested range from 10–16 millimeters in size, i.e., diameter.[1] After harvesting, the onions retain their roots, leaves and tops and are covered with a certain amount of soil. They arrive at the processing plant in this condition where the following steps are taken to freeze and pack them: The onions are first washed with water in a rotating machine; then machine-trimmed to cut off

[1] A millimeter is 0.03937 of an inch. Thus, expressed in inches, the diameter of the imported onions is from out 0.39 to 0.62 inches.

the roots, leaves and tops (which are inedible); separated according to size depending on buyer specifications; graded according to quality; blanched by heating to 167° F. for five minutes to remove enzymes and protect the color; cooled; and finally frozen and packed. During the washing and trimming process, the onions usually lose their thin outer skin or covering which has a thickness of about 20 microns.[2] This occurs because the outer skin is less adhesive than the normal rings. Aside from removal of the outer skin, the onions are never peeled. Further, they still have the same diameter after processing as when they come from the field except for the reduction caused by loss of the outer skin and an immeasurable increase caused by freezing. After importation (as indicated in the incorporated record), the onions are mixed with peas, to which seasoning is added, and packed in cartons.

According to van den Doel, the silverskin onions with the outer skin or covering still intact are suitable for human consumption both before and after cooking. In fact, his company packs onions with some of the skin intact in jars of vinegar and they are consumed in this state.

Defendant's witness Cornelius Rietveld (as indicated previously) has been in the business of growing onions for some 40 years and growing silverskin onions regularly since 1965. He was also at one time in the onion processing business. His testimony related to the marketing of silverskin onions in the United States and was in summary as follows: In this country, silverskin onions are called pearl onions.[3] They range in size from 10–25 millimeters in diameter and are used for brining, freezing, and canning. At the time of harvesting, the onion has a top that is beginning to mature and dehydrate and this top—which is loose—is removed mechanically with a mowing device. However, to prevent injury to the onion, about an inch or more of the top (which resembles a stem) remains on the bulb at the time it is harvested. The roots of the onion are removed from the ground with a rooting device. with the roots still on the onions at the time of harvesting. Also remaining on the onion at the time of harvesting is the outer layer of skin which serves as the onion's natural defense mechanism against decay. Growers and farmers market fresh onions in the foregoing condition, i.e., with a one inch top, root and outer skin remaining.[4]

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[2] A micron is a thousandth part of one millimeter. It is to be added that the witness van den Doel stated in response to a cross-interrogatory that all his company's onions are processed to meet "the highest customers specifications * * *." Thus the company would have to meet specifications which state that the onions must be well trimmed and practically free of pieces, stripes, roots, tops, blemishes, and attached hard skin. In this latter connection, the specifications also provide that no more than 3 percent by count in a given sample may show one or more of these defects. Within this 3 percent, the specifications prescribe that no more than 1 percent of the onions may have all or a portion of "the tough outer skin remaining attached."

[3] For convenience, the term "silverskin onions" will refer hereafter to pearl as well as silverskin onions.

[4] According to the witness, no farmers in the United States who grow silverskin onions are engaged in the business of freezing them.

When farmers sell silverskin onions to a processor for freezing, the latter cleans the onions by washing them in water; grades them by size; removes the outer skin, the top, and root; blanches and freezes them and then markets them as frozen onions. The removal of the outer layer is essential to the freezing process and all processors in this country remove it prior to freezing. One reason this is done is to make the onion more appealing to the consumer. For, according to Mr. Rietveld, were the outer layer not removed it would become harder and harder and would have to be peeled off by hand before consuming it or separated in the mouth and spit out since it is not an edible portion of the onion. In the witness' words, "[i]t would be like eating the shucks with the corn * * *." (R. 69.) Other reasons requiring removal of the outer skin in the freezing process are the need to compete with silverskin onions from Holland and the necessity of meeting customer specifications. The witness stated that a conscious effort was required to remove the onion's outer layer of skin, though there are several general methods of doing so, such as by abrasion, controlled air, burning or lye-peeling. In short, before frozen silverskin onions in the United States are marketable to the consumer, the outer layer of skin has to be removed as does the root and top.[5]

During the process of harvesting, up to 40 percent of the outer layer of skin may become removed depending upon the humidity and the time of day the operation took place. However, the witness' own practice is to avoid harvesting under conditions producing more than 15 percent outer layer removal. The optimum state in harvesting is to have the entire outer layer intact thereby providing the greatest protection against decaying organisms.

The testimony of Rietveld also indicates that in the areas with which he is familiar the primary market for fresh silverskin onions is in sales to processors. In this connection, the witness sells his entire production of such onions to processors because consumer demand for fresh silverskin onions is very limited and the market is too inconsistent.[6] However (as noted before), when growers do sell directly to the consumer through stores, roadside markets or stands, the fresh onions are sold as they come from the ground, i.e., with the root, top, and outer skin remaining thereon. Similarly, fresh onions are normally sold to processors in this condition.

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[5] The witness Rietveld expressed the opinion that the removal of the outer skin of the onions reduces their size but that a tolerance of one-sixteenth of an inch is permissible.

[6] Elaborating on this latter aspect, the record shows that while a grower usually can receive a higher price when he sells onions to the supermarket or directly to the consumer than when he sells to a processor, the reason why more onions are not sold directly to supermarkets or consumers is the inconsistency of supply and demand. For example, there would be no way to market 100 acres of onions (Rietveld's current silverskin production within a period of six weeks in such consumer channels.

II

We turn now to the legal aspects starting with *United States* v. *The Hothouse Products Corp., Quinn & Werner*, 21 CCPA 261, T.D. 46789 (1933). The question there involved was whether endives imported from Belgium were properly classifiable as "Vegetables in their natural state" under paragraph 774 of the Tariff Act of 1930, which provided for:

> Vegetables in their natural state, * * * not specially provided for, * * *.

The importer claimed the merchandise to be dutiable under paragraph 775 of the Tariff Act of 1930, which provided for:

> Vegetables * * * if cut, sliced, or otherwise reduced in size, * * * not specially provided for * * *.

Prior to importation about 20 percent of the outer leaves had been removed by the grower. The record showed that such leaves were always removed by the grower before placing them on the market, both in this country and in Belgium. In this context, the court was called upon to construe the meaning of the words "reduced in size" as used in paragraph 775. The court stated (p. 263):

> * * * We are of the opinion that Congress did not intend by this language that all vegetables reduced in size from the condition in which they are taken from the ground should be classified under paragraph 775. To so hold would exclude many vegetables, like cabbage and celery, from classification as "vegetables in their natural state" under paragraph 774, if decayed leaves of the cabbage were removed or the root of the celery stalk were severed.

The court in *Hothouse Products* then discussed the case of *United States* v. *Strohmeyer & Arpe Co.*, 167 F. 533 (2d Cir. 1909) which held that imported cauliflowers which had been trimmed, washed and packed in brine for preservation during transportation were classifiable as "Vegetables in their natural state," rather than as "vegetables, prepared or preserved." [7]

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[7] The following excerpt from the opinion in *Strohmeyer* (167 F. at 534) was then quoted by the court in *Hothouse Products* (21 CCPA at 263):

> The Board and the Circuit Court concur in the opinion that the importers' contention is well founded, and we see no reason for reaching a different conclusion. The question, briefly stated, is whether the imported cauliflower, concededly a vegetable, when it arrived at the port of entry was in its natural state or prepared or preserved.
>
> The tariff act, like all statutes, must be given a common-sense construction. If paragraph 257 be construed literally it would result in the prohibition of the importation of all vegetables, for the moment a vegetable is cut from its growing stem or taken from the ground it ceases, in this restricted sense, to be in its natural state. If an exceedingly strict construction were adopted, it would exclude vegetables which have been washed or trimmed or from which decayed or superfluous leaves or stems have been removed; for these too, strictly speaking, are not in their natural state. Of course such a construction is absurd and no one contends to the contrary. The statute must be so interpreted as to give force to the evident intent of Congress to permit vegetables, as they are known and dealt with in this country, as they come from the farm and garden, to enter by paying a duty of 25 per cent.

After considering *Strohmeyer*, the court in *Hothouse Products* stated (21 CCPA at 263–4):

> In harmony with the foregoing, we are of the opinion that it was the intent of Congress that vegetables should be regarded as being in their natural state, and not reduced in size, if the ordinary and usual process employed by the grower is to remove even a substantial percentage of the outer leaves before placing them on the market. It is our opinion that when Congress used the words "reduced in size," it contemplated, with reference to vegetables of this character, *a reduction in size beyond the point that such vegetables are ordinarily reduced in size as an incident of placing them in a marketable condition.* In other words, if endives, as grown in this country and abroad, are not usually sold or dealt in without removing a part of the leaves, then with such leaves removed they are in their natural state and not reduced in size in a tariff sense. [Emphasis added.]
>
> The testimony abundantly establishes the fact that a portion of the leaves of endives is always removed by the grower before placing them on the market, both in this country and in Belgium, and that, except at the beginning of the season, the leaves removed are thrown away in the field.
>
> Had there been any testimony that endives were also marketed by farmers without the removal of a portion of the leaves we might come to a different conclusion, but upon the record before us we are constrained to hold that the lower court was in error in holding that the endives here involved had been "reduced in size" within the meaning of those words as used in said paragraph 775, and hold that the merchandise was correctly classified by the collector.

The same meaning for "reduced in size" has been carried over into the tariff schedules. See *Border Brokerage Company, Inc.* v. *United States*, 60 Cust. Ct. 487, C.D. 3437, 284 F. Supp. 806 (1968). Against this background, we consider *North Pacific Canners and Packers* v. *United States*, 64 Cust. Ct. 551, C.D. 4034 (1970) the record in which (as previously indicated) was incorporated in the present actions. That case involved quick frozen silverskin onions imported from Holland which were the same as the onions involved in the present case. As here, the onions were classified under item 138.00 and claimed to be classifiable under item 136.91. Thus the issue—as in the case at bar—was whether the imported onions were "reduced in size" within the meaning of item 138.00. In a 2–1 decision, the Third Division of this court held that plaintiff had failed to prove its affirmative claim and therefore overruled its protest. More specifically, the majority noted that "the pertinent cases have established that the phrase 'reduced in size' means 'reduction in size beyond the point

that such vegetables are ordinarily reduced in size as an incident of placing them in marketable condition.' " 64 Cust. Ct. at 555. It then pointed out that plaintiff had the dual burden of proving not only that the government's classification was erroneous but that its claimed classification was correct. As to the latter aspect, the majority stated (*ibid.*):

> On the record herein, which bears, in essence, on the processing of the subject merchandise in Holland, and not at all on the marketing practices in this country with regard to such vegetables, we find that plaintiff has failed to discharge its burden of proving that the onions at bar are not cut, sliced, or "reduced in size" as that term is defined in the *Hothouse Products* and *Border Brokerage* cases, *supra*, and that they come within the claimed classification.[8]

In short, in *North Pacific Canners*, the court's conclusion was predicated on plaintiff's failure to introduce evidence of the marketing practices in this country with regard to frozen silverskin onions. By contrast the record in the present case provides ample evidence of the marketing in the United States of frozen silverskin onions and supports plaintiffs' contention that the imported onions in issue are not reduced in size. The frozen onions at bar, upon importation, had been cleaned; had had their roots and tops removed; and had had their outer layer of skin dislodged in most instances. This, the record makes clear, is the identical condition in which frozen silverskin onions are marketed to the consumer by processors who freeze onions in the United States. As defendant's witness Rietveld testified, in order to market such onions to the consumer in this country, the United States processor cleans the onions; has their roots and tops removed; and has their outer layer of skin removed. Indeed Rietveld added that removal of the onion's outer layer of skin is essential to the freezing process and all processors in this country remove it. Whether this outer layer is removed inadvertently during the freezing process (as plaintiffs' witness stated) or deliberately during the processing operation (as defendant's witness testified) is not of paramount im-

[8] The dissenting judge stated in part (64 Cust. Ct. at 555):

> The issue in this case is whether frozen onions, in the condition imported, were reduced in size. That is a question of fact.
>
> Going no further than the facts as to the processing of the frozen onions discussed in the majority opinion with the case law, I am satisfied that plaintiff has made a *prima facie* showing that the frozen onions were not reduced in size. I would, accordingly, sustain the protests.
>
> There was, as the majority states, an immeasurable increase in the size of the onions caused by freezing. With reference to vegetables of the character of these imported frozen onions, it seems to me implicit that the "immeasurable outer film" which "mostly" disappears during the freezing process was no more than the ordinary consequence of placing them in a marketable frozen condition. *United States* v. *The Hothouse Products Corp., Quinn & Werner*, 21 CCPA 261, T.D. 46789 (1933). There is no evidence to the contrary.

portance to a determination of these actions. What is crucial is the fact that in both Holland and the United States not only is the outer layer removed, but must be removed (either deliberately or as an incident of the freezing process).

Summing up, in both the United States and Holland the silverskin onions' roots, tops and their outer layer of skin are virtually always removed as an incident of placing them in a marketable frozen condition. Thus, the imported frozen silverskin onions are not "reduced in size" beyond the point that such vegetables are ordinarily reduced in size as an incident of placing them in a marketable condition.

Defendant, however, argues that the articles of commerce in question are onions as they come from the field and that like other vegetables an onion is " 'reduced in size' for tariff purposes if it has been reduced beyond the form in which it comes from the farm and the field, in which it is marketed by the farmer and the grocery man." (Br. p. 14.) On this matter, defendant places heavy reliance on the Tariff Commission *Summaries of Trade and Tariff Information*, Schedule 1, Vol. 7, p. 115 (1968) which indicates that domestic production supplied about 98 percent of the fresh onions consumed in 1963–1967 and that in 1967 an estimated 85 to 90 percent of the onion crop was consumed fresh. Thus, defendant adds, "it can be assumed that during the relevant period (1967 and 1968), most of the onions consumed in the United States consisted of domestically produced *fresh* onions." (Br. p. 26.) [Emphasis in original.] Since most of the onions in the United States are consumed fresh and since fresh onions in the United States are marketed with their roots, tops and outer skin, defendant contends (i) that the removal of the tops, roots and outer skin of onions is not an incident to their marketability in the United States; and (ii) that because the onions at bar no longer possess their tops, roots, and skin, they have been "reduced in size" for tariff purposes and cannot be classified under item 136.91.

There are several difficulties with this argument, however. In the first place, the articles at issue consist of frozen silverskin onions which were assessed with duty under item 138.00 which covers "Vegetables, fresh, chilled, or frozen, and cut, sliced, or otherwise reduced in size (but not otherwise prepared or preserved)." Similarly, the superior heading to item 136.91—the item which plaintiffs claim to be applicable—covers "Vegetables, fresh, chilled, or frozen (but not reduced in size or otherwise prepared or preserved)." Thus, these provisions include vegetables whether fresh, chilled, or frozen and, in this respect, it must be emphasized that the terms fresh, chilled, or frozen are joined by the conjunction "or" which when given its clear disjunctive

meaning requires that the terms be considered as mutually exclusive alternatives. Hence these provisions were obviously intended to cover fresh vegetables, chilled vegetables, or frozen vegetables as separate and distinct articles of commerce.

Second, acceptance of defendant's argument that *fresh* onions are the appropriate articles of commerce, would make a nullity of the provisions of item 136.91 to the extent that that item covers frozen silverskin onions not reduced in size. For under defendant's view even though such frozen onions are always marketed with the tops, roots, and outer skin removed, they would still have to be treated for tariff purposes as *fresh* onions and thus necessarily would always have to be considered as reduced in size.

What is more, the very Tariff Commission *Summaries of Trade and Tariff Information*, Schedule 1, Vol. 7 (1968) on which defendant (as observed previously) places considerable reliance, militates against defendant's position. Thus in discussing the scope of item 138.00 under which the importations were classified and which (to repeat) covers fresh, chilled or frozen vegetables *reduced in size* (but not otherwise prepared or preserved), the following is stated in the *Summaries* (p. 173):

> Included in this summary are all fresh, chilled, or frozen vegetables which have, within the tariff meaning, been reduced in size by cutting, slicing, or other methods but which have not been otherwise prepared or preserved. Well known examples of the vegatables included here are cut corn, broccoli, spinach, french and regular cut green beans, and diced and regular-cut carrots. The vegetables covered herein are most often marketed in a frozen condition, inasmuch as they are usually considerably less perishable in that condition than when fresh or chilled. Notable exceptions, however, are tossed salad and cole slaw mixtures which are usually marketed in a chilled condition.
>
> *Some of the major frozen vegetables are not included in this summary because* they have been further processed (e.g., frozen french fried potatoes), or *they are not considered to be reduced in size for tariff purposes* (*e.g., frozen peas which have been shelled and brussels sprouts which have had the outer leaves removed and the bases cut*). * * * [Emphasis added.]

From the foregoing, it is apparent that frozen vegetables are considered a separate article of commerce. Further, it must be concluded that just as frozen peas which have been shelled and frozen brussels sprouts which have had their outer leaves removed and bases cut are not considered to be reduced in size, so too frozen onions such as those involved here which had their tops, roots and outer skin removed both

in Holland and this country as an incident of placing them in a marketable condition cannot be considered as reduced in size.

Defendant further argues that in the *Strohmeyer* case, *supra*, 167 F. 533 (1909)—the reasoning in which was followed in the *Hothouse Products* case, *supra*, 21 CCPA 261 (1933)—"the Court did not compare *brined* imported and domestic vegetables but looked to how fresh vegetables are known and dealt with in the United States, how they come from the farm and garden." (Br. p. 32.) However, in each of these cases the issue was whether or not the importations were "Vegetables in their natural state," thus necessitating inquiry into the manner in which *such* vegetables were marketed as they came from the farm. Thus in *Strohmeyer* the merchandise consisted of cauliflower, trimmed, washed, and packed in brine for preservation during transportation. The competing provisions were paragraph 257 of the Tariff Act of 1897, which covered "Vegetables in their natural state" and paragraph 241 of that Act, which covered "vegetables, prepared or preserved." In *Hothouse Products* the merchandise consisted of endives with a substantial portion of the outer leaves removed and the competing provisions involved paragraph 774 of the Tariff Act of 1930, which covered "Vegetables in their natural state" and paragraph 775 of that Act which covered "Vegetables * * * reduced in size." It is readily discernible that none of the tariff provisions involved in these cases included a specific enumeration or description for frozen vegetables nor was the merchandise at issue a frozen vegetable. Hence, when the court discussed "vegetables * * * as they come from the farm" in the *Strohmeyer* case it was referring to vegetables similar to those then before the court and not "frozen" vegetables. Similarly in *Hothouse Products* the court specifically enumerated "endives" in its qualifying statement and thus limited its decision to those articles before the court. It should be further noted that the decisions in these cases were promulgated in 1909 and 1933, respectively, which can be judicially noticed as being prior to the advent of commercial frozen vegetables.

Lastly, defendant relies on *Border Brokerage*, *supra*, 60 Cust. Ct. 487 (1968) as supporting its position that in determining whether or not frozen vegetables have been reduced in size, the court must determine how such vegetables are marketed in their fresh state. In that case, plaintiff claimed that frozen fiddlehead greens which had been cut at harvest from their roots were improperly classified under item 137.70 providing for "Vegetables * * * frozen (but not reduced in size nor otherwise prepared or preserved)," since they were cut, or

reduced in size, within the meaning of item 138.00. The court rejected this contention, stating (60 Cust. Ct. at 489):

> * * * [P]laintiff's argument that the act of harvesting vegetables is itself such a cutting, or reduction in size, as the tariff schedules contemplate, seems to us also to be specious. Vegetables are articles of commerce that are bought, sold and imported, as vegetables. They are not the growing vegetables of horticulture, useless in commerce *qua* vegetables until the plants have been harvested.
>
> The cutting, or reduction in size, of vegetables, which the tariff schedules describe, is the cutting or reduction in size of the commercial vegetable. Here we have no proof of any such processing. Indeed, the proofs are to the contrary, that the only cutting of these greens was the severance incident to harvesting.
>
> That this is the rule is too well established to call for extensive citation of authorities. It suffices to refer to the opinion of our appeals court in *United States* v. *The Hothouse Products Corp., Quinn & Werner*, 21 CCPA 261, T.D. 46789, * * *.

With these considerations in mind, defendant's reliance on *Border Brokerage* is misplaced. For there the issue was not raised as to whether it was necessary for the court to compare the processing of imported frozen greens with the processing of such greens in their fresh state at and after harvest. Nor indeed was that issue relevant in that case since aside from freezing, the frozen and fresh greens were marketed in precisely the same physical condition, namely cut at harvest from their roots.

In summary, it is held that the imported silverskin onions are properly dutiable at 1.75 cents per pound under item 136.91. Plaintiffs' claims are therefore sustained and judgment will be entered accordingly.

(C.D. 4591)

AZUFRERA PANAMERICANA, S.A. *v.* UNITED STATES

On Defendant's Motion To Dismiss

Court No. 74–5–01358

Dumping duties on sulphur

Port of Philadelphia

[Motion granted.]

(Dated April 11, 1975)

Williams, Connolly & Califano (*J. Alan Galbraith* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

MALETZ, Judge: Plaintiff is a Mexican sulphur producer which exported sulphur to the United States on which a dumping duty was levied. Plaintiff filed four protests against these assessments. The protests were denied whereupon plaintiff filed a summons and complaint in this court to invalidate the assessments. Defendant now moves pursuant to rule 4.7(b) to dismiss the action on the ground, among others, that plaintiff lacks standing to sue. For the reasons that follow, the motion to dismiss is granted.

By way of introduction, it is to be noted that under 28 U.S.C. 1582 (1970)[1] this court lacks jurisdiction over a civil action unless a protest is first filed and denied by the appropriate customs officer. Further, it is clear from 28 U.S.C. 2631 that the time for commencing an action does not occur until after the filing and denial of such a protest.

With this as background, we turn now to 19 U.S.C. 1514 which to the extent relevant provides:

(a) * * *

* * * decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 1520(c) of this title,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action conetsting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of Title 28 within the time prescribed by section 2631 of this title. * * *

(b) * * *

(1) A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer * * * setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision

[1] All references here and hereafter to the United States Code refer to the 1970 edition.

as to which protest is made; and the nature of each objection and reasons therefor. *Only one protest may be filed for each entry of merchandise,* except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. * * * Except as otherwise provided in section 1557(b) of this title,[2] *protests may be filed by the importer, consignee, or any authorized agent of the person paying any charge or exaction, or filing any claim for drawback, or seeking entry or delivery, with respect to merchandise which is the subject of a decision in subsection (a) of this section.* [Emphasis added.]

Thus it is manifest that in a case involving the validity of a tariff levy, only the importer, consignee, or any authorized agent of the person paying the levy, may file a protest and upon its denial commence a civil action in this court. Moreover the protest must be filed by one of such authorized persons in order to invoke the court's jurisdiction under 28 U.S.C. 1582.

The same conditions and limitations are equally applicable to a levy of dumping duties as is evident from 19 U.S.C. 169, which states:

> For the purposes of sections 160 to 171 of this title [which relate to special dumping duties], the determination of the appropriate customs officer as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of such customs officer in assessing special dumping duty, shall have the same force and effect and be subject to the same right of protest, under the same conditions and subject to the same limitations; the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of protests relating to customs duties under existing law.

With these considerations in mind, we turn now to the official papers which show that the summons in this action contests the denial of Protest Nos. 1103–4–000002, 1103–4–000004, 1101–4–000044, and 1101–4–000046 covering Entry Nos. 062A, 066A, 003575, and 004007. Challenged in these protests were the legality of the Treasury Department's less than fair value determination; the legality of the Tariff Commission's injury determination; and the correctness of the Customs Service's computation of the dumping duty under the Antidumping Act of 1921. It is to be added that this challenge is more specifically set forth in an attached document which purports to be a joint protest by plaintiff-Azufrera Panamericana, S.A. and Pasco Terminals, Inc. According to this joint protest, Pasco Terminals paid the duty. The official papers further reveal that the merchandise was entered by Dunnington and Arnold of Philadelphia, Inc. as importer

[2] 19 U.S.C. 1557(b) relates to the rights of specified persons to withdraw merchandise from a warehouse and is therefore not relevant here.

of record (for the account of Pasco Terminals, Inc. in Entry Nos. 062A, 066A, and 004007, and E. I. duPont de Nemours in Entry No. 003575).[3] Thus, plaintiff is neither the importer nor the consignee of the merchandise at bar. Furthermore, plaintiff has not contended (nor is there any indication to that effect in the record) that it is an authorized agent of the person paying the duties here in question. Hence, plaintiff is clearly not one of the persons authorized to file a protest pursuant to 19 U.S.C. 1514. Accordingly, the protests filed on behalf of plaintiff, while denied by the Customs Service, were improperly filed and cannot form the basis of a civil action under 28 U.S.C. 1582.

Plaintiff, however, indicates that under 19 U.S.C. 1514(a)(4) in conjunction with 19 U.S.C. 1514(b)(1), a party seeking entry of merchandise into the United States is afforded the right to file a protest and a civil action in this court if its protest is denied. On this basis, plaintiff argues that it has standing because it is the party seeking entry to deliver sulphur into the United States pursuant to contracts between it and its customers. The difficulty with this contention is that the present action does not deal in any way with the exclusion of merchandise from entry; to the contrary, the importer of record, Dunnington and Arnold, not only sought, but, in fact, made entry.

Finally, as previously observed (note 3, *supra*) there is another action pending before this court which raises the identical issues with respect to the same entries.[4] In this circumstance, the prohibition in 19 U.S.C. 1514(b)(1) against the filing of more than one protest for each entry of merchandise is an additional reason for concluding that the protests involved in the present case have been improperly filed and cannot give rise to a second civil action directed against the same entries.

For the foregoing reasons, defendant's motion to dismiss is granted and the action is hereby dismissed.

(C.D. 4592)

THE A. W. FENTON CO., INC. *v.* UNITED STATES

Plastic table mats

Table mats manufactured from polyvinyl chloride hollow tubular structures *held* properly subject to classification under paragraph 1312, Tariff Act of 1930, as modified by the Sixth Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade, 91 Treas. Dec. 150, T.D. 54108, as classified.

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[3] There is also pending before this court *Pasco Terminals, Inc.* v. *United States*, Court No. 74-5-01357, filed by the same counsel who represent plaintiff here, contesting the denial of Protest Nos. 1103-4-000001, 1103-4-000003, 1101-4-000043, and 1101-4-000045, which protests are directed against the *same* entries as are involved here.

[4] Each of the entries covers the same merchandise, i.e., sulphur.

Merchandise classified under paragraph 1312, *supra*, carries with it the presumption of correctness that said merchandise is a manufacture of filaments, fibers, yarns or threads, of rayon or other synthetic textile. *Hayes-Sammons Chemical Co.* v. *United States*, 55 CCPA 69, C.A.D. 935 (1968).

PARAGRAPH 1313, AS AMENDED—GRAMMATICAL CONSTRUCTION

The contention of plaintiff that paragraph 1313, as amended, requires all rayon or synthetic textiles to be suitable for the manufacture of textiles is untenable. The use of a comma after "fibrous structure," in conjunction with the word "and," and the placing of the phrase "suitable for the manufacture of textiles" in parentheses clearly evidence the intent of Congress to cover any band or strip not over 1 inch in width; but the phrase "suitable for the manufacture of textiles" does not modify "rayon or other synthetic textile" or "any fiber, filament, or fibrous structure," utilized in the first portion of said definition.

SAME—SYNTHETIC TEXTILE

The use of the term "synthetic textile" in the first portion of said definition is intended to encompass any synthesized product in the form of fiber, filament, or fibrous structure, derived from cellulosic or noncellulosic material by chemical processes.

Court No. 63/6050

Port of Cleveland

[Judgment for defendant.]

(Decided April 21, 1975)

Allerton deC. Tompkins for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Herbert P. Larsen* and *Max F. Schutzman*, trial attorneys), for the defendant.

FORD, Judge: This action is directed against the classification of certain table mats measuring approximately 12" x 18" which are composed of polyvinyl chloride in the form of hollow tubular structures having a diameter of somewhat less than one-eighth of an inch. They were classified under the provisions of paragraph 1312, Tariff Act of 1930, as modified by the Sixth Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade, 91 Treas. Dec. 150, T.D. 54108, which provides as follows:

Manufacturers [sic] of filaments, fibers, yarns, or threads, of rayon or other synthetic textile, and textile products made of bands or strips (not exceeding 1 inch in width) of rayon or other synthetic textile, all the foregoing, wholly or in chief value of rayon or other synthetic textile, not specially provided for (except gill nets or netting)	25¢ per lb. and 30% ad val.

The definition of the term "rayon or other synthetic textile" in paragraph 1313 of the Tariff Act of 1930, as amended by Pub. L. 85–645, 72 Stat. 602, reads as follows:

> As used in this title, the term "rayon or other synthetic textile", means any fiber, filament, or fibrous structure, and any band or strip (suitable for the manufacture of textiles) not over one inch in width, all the foregoing whether formed by extrusion or by other processes from substances derived by man from cellulosic or noncellulosic materials by chemical processes, such as, but not limited to, polymerization and condensation, but the term does not include fibers, filaments, fibrous structures, or bands and strips of glass or other nonmetallic mineral, or of metal, paper, or natural rubber.

Plaintiff's primary claim is that the mats are properly subject to duty at the rate of 12½ per centum ad valorem as manufactures of grass, sea grass, straw or weeds as prescribed by paragraph 1537(a), Tariff Act of 1930, as modified by the Protocol of Terms of Accession by Japan to the General Agreement on Tariffs and Trade, 90 Treas. Dec. 234, T.D. 53865, and T.D. 53877, by virtue of the similitude provision contained in paragraph 1559(a), Tariff Act of 1930, as amended by the Customs Simplification Act of 1954, T.D. 53599. The pertinent portions of said provisions provide as follows:

> Paragraph 1537(a), as modified, *supra:*
>
> Manufactures of bone, chip, grass, sea grass, horn, straw, or weeds, or of which these substances or any of them, or a combination of these substances or any of them with quills, palm leaf, or whale bone, is the component material of chief value, not specially provided for:
>
> * * * * * * *
>
> Other ..... 12½% ad val.

Paragraph 1559(a), as amended by the Customs Simplification Act of 1954, 68 Stat. 1137:

> Each and every imported article, not enumerated in this Act, which is similar in the use to which it may be applied to any article enumerated in this Act as chargeable with duty, shall be subject to the same rate of duty as the enumerated article which it most resembles in the particular before mentioned; and if any nonenumerated article equally resembles in that particular two or more enumerated articles on which different rates of duty are chargeable, it shall be subject to the rate of duty applicable to that one of such two or more articles which it most resembles in respect of the materials of which it is composed.

Alternatively plaintiff contends said merchandise to be properly dutiable under the following provisions:

Paragraph 1558, Tariff Act of 1930, as modified by T.D. 52739 and T.D. 52827, at 10 per centum ad valorem or at 8½ per centum under said paragraph, as modified by T.D. 54108.

Paragraph 1539(b), as modified by T.D. 54108, at 21 cents per pound and 17 per centum ad valorem or, by virtue of the similitude clause contained in paragraph 1559(a), *supra*, as similar to articles provided for in the following paragraphs:

911(b), as modified by T.D. 53865 and T.D. 53877, at 15 per centum ad valorem;
923, as modified by T.D. 53865 and T.D. 53877, at 20 per centum ad valorem;
1413, as modified by T.D. 52373 and T.D. 52462, at 17½ per centum ad valorem.

Additional claims set forth in the complaint were not argued by plaintiff and are deemed abandoned.

The record consists of the official papers, which were received in evidence without being marked, two exhibits offered by plaintiff, and the testimony of Mortimer Atleson, executive vice president of Plastic Film Products Corporation of Akron, Ohio, the actual importer herein. The witness testified that his duties include being in charge of sales, administrative work, product design and purchasing; that sales of the company's products are made throughout the United States and Canada; that he purchased the involved table mats on one of his trips to the Orient. Mr. Atleson observed the manufacture in Japan which he described as being made from polyvinyl chloride which compound is fed into an extruder which produced an article circular in form with a diameter somewhat less than one-eighth of an inch. From the extruder, they go on a conveyor to a dielectric heat cylinder which depresses the extruded material forming a design and welding them together in their semimelted state forming a table mat.

The witness produced a drawing of the merchandise which was received in evidence as plaintiff's exhibit 1. The exhibit depicts the mat though there are variations in the geometric design in the center of the mat and it is produced in various color combinations. Mr. Atleson has seen table mats used in homes of his friends on tables. The imported articles are used in the same manner as those composed of weeds, reeds, pineapple cloth, cotton, linen, plastic, etc. The witness stated that of the foregoing, the mats made out of straw, reed or weed most closely resemble the imported mats. The composition of the mat does not, according to the witness, fall within the definition contained in paragraph 1313, Tariff Act of 1930, or as amended, *supra*, since it is too rigid to be used in the manufacture of a textile. Plaintiff offered as exhibit 2 a paper straw as illustrative of the plastic used in the mat insofar as appearance is concerned.

The straw, however, is slightly larger in diameter than the hollow tubular structures used to manufacture the involved mats. Mr. Atleson was not aware of textiles being manufactured from polyvinyl chloride.

Based upon the record as made, plaintiff contends the imported table mats are not subject to classification under the provisions of paragraph 1312, *supra*, as they are not composed of filaments or fibers of a synthetic textile since the polyvinyl chloride tubes of which the imported mats are made are not a textile nor are they suitable for textile purposes.

Classification of the involved mats under the provisions of paragraph 1312, *supra*, carries with it the presumption of correctness that said merchandise is a manufacture of filaments, fibers, yarns or threads, of rayon or other synthetic textile. *Hayes-Sammons Chemical Co.* v. *United States*, 55 CCPA 69, C.A.D. 935 (1968).

Based upon an examination of plaintiff's exhibit 1 and the testimony of Mr. Atleson wherein he described the hollow tubelike structure, the court is of the opinion that the involved mats are made of filaments. This being so, the next consideration to be given relates to plaintiff's position with regard to the phrase "synthetic textile" as utilized in paragraph 1312, *supra*, and as defined in paragraph 1313, *supra*.

In the case of *Robert E. Landweer & Co., Inc., Consolidated Net & Twine Co., Inc.* v. *United States*, 52 Cust. Ct. 122, C.D. 2448 (1964), the court reviewed the then new definition contained in said paragraph 1313, *supra*, and made the following observation:

> Although plaintiffs endeavored to establish that the monofilament used in the gill netting involved herein was not susceptible to textile manufacturing, Judge Donlon, the trial judge, properly held that the witness had not been qualified with respect to textile manufactures.
>
> In any event and notwithstanding the lack of evidence with respect to textile manufacturing, the basic proposition presented was the interpretation of the new definition contained in paragraph 1313, as amended, *supra*. It is the parenthetical phrase, "suitable for the manufacture of textiles," which is relied upon by plaintiffs herein. It is contended the phrase is a limiting one which requires all rayon or other synthetic textiles, as defined in paragraph 1313, as amended, *supra*, to be suitable for the manufacture of textiles. The grammatical construction of the paragraph does not bear out this theory. The use of a comma after "fibrous structure," in conjunction with the word "and," and the placing of the phrase in parentheses clearly evidence the intent of Congress to include within the scope of the provision any band or strip not over 1 inch in width, which is suitable for the manufacture of textiles. The parenthetical phrase does not modify "rayon or other synthetic textile" or "fiber, filament,

or fibrous structure," but covers only bands or strips not exceeding 1 inch in width, as indicated, *supra*.

Accordingly, the fact that filaments may not be suitable for the manufacture of textiles does not militate against classification thereof under paragraph 1312, *supra*. In a subsequent decision involving plastic place mats made of hollow tubelike filaments, the court found said mats to be subject to classification under paragraph 1312, *supra*. *Atlantic Linen Importing Co.* v. *United States*, 62 Cust. Ct. 725, C.D. 3854 (1969).

Inasmuch as the court has found the mats to be made of filaments and it is not contested that polyvinyl chloride is a synthetic, it was incumbent upon plaintiff to negate this evidence. The record as made is lacking the necessary credible evidence to overcome the above facts. Accordingly, plaintiff's claim under the basket provision of paragraph 1558, *supra*, is overruled, as is the claim under paragraph 1539(b), *supra*. The claims made by virtue of the similitude clause contained in paragraph 1559(a), *supra*, are likewise overruled since classification by similitude may not be accomplished when the article involved may be classified under any tariff enumeration excluding the so-called basket clause of paragraph 1558, *supra*. *Moscahlades Bros.* v. *United States*, 13 Ct. Cust. Appls. 633, T.D. 41482 (1926); *P. Silverman & Son* v. *United States*, 32 CCPA 99, C.A.D. 292 (1944); *Package Machinery Co.* v. *United States*, 41 CCPA 63, C.A.D. 530 (1953); *New York Merchandise Co., Inc.* v. *United States*, 65 Cust. Ct. 73, C.D. 4057 (1970).

Judgment will be issued for defendant.

(C.D. 4593)

ANDY MOHAN, INC. *v.* UNITED STATES

Clothing

Merchandise consisting of men's custom-made suits, slacks, vests, and a jacket, manufactured in Hong Kong, were appraised on the basis of constructed value, at defined in section 402(d) of the Tariff Act of 1930, as amended, at the invoiced unit values expressed in U.S. dollars. Plaintiff conceded the applicability of section 402(d) but claimed a lesser constructed value expressed in Hong Kong dollars. As in the case of *Andy Mohan, Inc.* v. *United States*, 63 Cust. Ct. 601, R.D. 11682 (1969), the record of which was incorporated, the plaintiff failed to discharge its burden of proof in overcoming the presumption of correctness with respect to the costs of material, fabrication and packing for each item of wearing apparel. The record in the present case not only failed to rectify the evidentiary deficiencies in the previous case, but also created ambiguities and revealed unexplained discrepancies in testimony.

In value cases, particularly those pertaining to cost of production or constructed value, the evidence is subject to careful scrutiny by the court. See e.g., *Frank P. Dow, Inc., et al.* v. *United States*, 376 F. Supp. 1013, 59 Cust. Ct. 697, R.D. 11370 (1967), *modified by stipulation*, 60 Cust. Ct. 758, R.D. 11469 (1968); *General Wool Co., Inc., et al.* v. *United States*, 56 Cust. Ct. 730, R.D. 11177 (1966), *aff'd*, 60 Cust. Ct. 970, A.R.D. 240 (1968). Further, all elements of a claimed statutory value must be established by substantial competent evidence. *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955). The testimony offered in the present case, as to costs of fabrication and packing, consisted solely of conclusory statements totally unsupported by evidentiary facts. See *Brooks Paper Co.* v. *United States*, 40 CCPA 38, C.A.D. 495 (1952).

Court No. R65/23570

Port of Honolulu

[Judgment for defendant.]

(Decided April 22, 1975)

Glad & Tuttle (*Edward N. Glad* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General *Velta A. Melnbrencis*, trial attorney), for the defendant.

RE, Judge: In this appeal for reappraisement the merchandise consists of men's custom-made suits, slacks, vests and a jacket, manufactured by Andy Mohan, Hong Kong. The articles were exported from Hong Kong on or about January 16, 1965 and entered at the port of Honolulu, Hawaii on January 20, 1965. They were appraised on the basis of constructed value, as defined in section 402(d), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, at the invoiced unit values which were expressed in United States dollars, less 10.7 percent, plus 25 percent, packed.

Plaintiff concedes the applicability of section 402(d), as amended, as the proper basis of appraisement but contends that a lesser constructed value, expressed in Hong Kong dollars, should have been returned by the appraising officer for each item.[1]

[1] A description of the articles, and the constructed values claimed for each, are as follows:

Order No.	Composition	Description	Constructed Value In Hong Kong Dollars
AMH 6449	55% Dacron 45% Wool	1 Suit	151.406
AMH 6449	Same	1 Suit	151.406
AMH 6487	Same	1 Suit	144.219
AMH 6477	Same	1 Suit	153.75
AMH 6477	Same	1 Suit	153.75
AMH 6477	Same	1 Vest	39.062
AMH 6477	Same	1 Vest	39.062
AMH 6477	Same	1 Slacks	50.625
AMH 6477	Same	1 Slacks	50.625
AMH 3683	55% Terylene 45% Wool	1 Suit	167.50
AMH 3690	100% Wool	1 Jacket	115.00

All plus the prorated share of the packing which comes to HK$3.00.

Constructed value is defined in section 402(d) as follows:

(d) CONSTRUCTED VALUE.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

The statutory presumption of correctness that attaches to the appraisements requires that plaintiff not only establish error in the appraised values, but also that it prove the correctness of the claimed dutiable values. 28 U.S.C. 2633, superseded by 28 U.S.C. 2635 by virtue of the Customs Courts Act of 1970, Pub. L. 91–271; *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955); *Kenneth Kittleson* v. *United States*, 40 CCPA 85, C.A.D. 502 (1952). Accordingly, plaintiff must establish each of the elements of its claimed constructed values as set forth in section 402(d), *supra*. *Bell Importing Co.* v. *United States*, 57 Cust. Ct. 552, R.D. 11196 (1966).

The parties are in agreement that the amount to be added for general expenses and profit (sec. 402(d)(2)) is equal to 25 percent of the cost of materials and fabrication. Thus, the question before the court is whether plaintiff has established the costs of material, fabrication and packing for each item of wearing apparel. Sec. 402(d)(1) and (3).

The present issue has been previously litigated in *Andy Mohan, Inc.* v. *United States*, 63 Cust. Ct. 601, R.D. 11682 (1969), and the record of that case has been incorporated herein.

The 1969 *Andy Mohan* case also dealt with men's custom-made clothing manufactured by Andy Mohan, Hong Kong. It was exported from Tokyo, Japan on January 19, 1965 and entered at Honolulu by plaintiff herein. The articles, like those at bar, were also appraised at invoice unit values, less 10.7 percent, plus 25 percent, packed,

on the basis of constructed value. The parties had stipulated that the ordinary addition for overhead and profit was a sum equal to 25 percent of the costs proved to be material and labor. Thus, plaintiff had to make the same showing of proof in the incorporated case as it must now make as to its claimed constructed values.

At the trial, in the earlier case, plaintiff offered the testimony of Mr. Andy Mohan, owner of Andy Mohan, Inc., and 16 exhibits. Judge Landis, who presided at the trial summarized the record as follows:

> "Andy Mohan, president of the Honolulu firm, and owner of Andy Mohan, Hong Kong, testified on trial. He described the operation of his Honolulu and Hong Kong business, which he set up and supervises. An Andy Mohan numbered order form (the order number becomes the reference number on the return Hong Kong invoice) is used to take customers' orders in Honolulu. On the order form are noted the customer's name, his measurements, the type of material to be used in making up the order and the delivery date. The order form is then sent to the Hong Kong office which notifies the tailor to come to the office in order to note the order and pick up the material from stock. The tailor comes to the Hong Kong office, copies down the measurements from the order, and a notation is made on the order form of the number of yards of material taken by the tailor for the particular order. A swatch of the material is attached to the order form which is kept in the files of the Hong Kong office." 63 Cust. Ct. at 603.

Judge Landis found that there was no substantial evidence on which the court could rely to support plaintiff's proposed constructed values, stating:

> "* * * I am of opinion that Andy Mohan's original orders for the suits, slacks, and shirt, tied as they are to the customs entry invoice by reference to the order number, are admissible as business records made in the regular course of business. 28 U.S.C., section 1732. The invoice for services and the sales invoices for materials are properly admissible on the question of what it cost to buy the materials and make these suits, slacks, and shirt. The exhibits weigh but little on this record in view of what I ascribe to be Mr. Mohan's vague and indefinite testimony, best illustrated by what he said it cost him to fabricate and pack the imported items of clothing.
>
> "Asked what he paid in Hong Kong dollars for packing the imported items, Mr. Mohan stated that he paid one Hong Kong dollar for the box and that with 'the thread, and everything, about, roughly, it cost me [Mr. Mohan] about a dollar-forty, dollar-fifty, something like that.' (R. 12.) That is all the record says about packing and for me it is much too uncertain and indefinite to rely on. When questioned about what he paid the tailor to make the suits and slacks, Mr. Mohan stated that he

had the bills with which he paid the tailor. Plaintiff's counsel elected not to offer the bills in evidence at that time, and elicited from Mr. Mohan testimony that he paid the tailor eighty Hong Kong dollars for fabricating the imported suits. (R. 16.) The paid bills would, of course, have been the best evidence of what Mr. Mohan paid. Counsel never did move the bills in evidence and this, read with Mr. Mohan's rather loose testimony about what Mr. Mohan paid the tailor for the slacks, moves me to give the testimony little weight. Mr. Mohan testified that slacks had 'a few prices. Some are 20 dollars, Hong Kong, some are cheaper. Wool is higher a little bit than cotton, and there was dacron.' (R. 17.) Three of the imported slacks are invoiced as made of dacron-wool material. One slack is invoiced as made of dacron-cotton. The following, transcribed of record, is what I am asked to rely on in constructing a value for the slacks:

> Q. Would you look at the invoice, and would you tell me whether or not the slacks noted thereon were slacks of dacron, or slacks of wool, or slacks of cotton?—A. Only the last slacks is dacron-cotton.
>
> Q. So that for all but the last slack, what did you pay the tailor in Hong Kong dollars?—A. Hong Kong dollars?
>
> Q. Yes.—A. Fourteen Hong Kong dollars.
>
> Q. Pardon?—A. Fourteen Hong Kong dollars, and eighteen Hong Kong dollars.
>
> Q. I thought you said you paid twenty Hong Kong dollars, too?—A. If it's a dac's style. All wool slacks, I pay twenty Hong Kong dollars. [R. 17.]

"It is unnecessary to cite all the pages in the record where the testimony is of the same general tenor. I do not propose to find constructed values on what it 'roughly' cost Mr. Mohan to pack the items or on cost figures for fabrication from which I can only surmise which figure is correct. *Brooks Paper Company* v. *United States*, 40 CCPA 38, C.A.D. 495 (1952). Were I to do that, I would have to do what the court of appeals warned against, 'supplying from imagination' facts without a substantial basis in fact. *United States* v. *Malhame & Co.*, 19 CCPA 164, T.D. 45276 (1931)." 63 Cust. Ct. at 603-04.

Plaintiff contends that the evidence of record in the pending case, together with the relevant testimony and exhibits from the incorporated case, have overcome the deficiences of proof cited by Judge Landis, and are sufficient to establish its claimed constructed values.

At the trial, plaintiff offered two exhibits; the defendant offered five exhibits, and called Mr. Andy Mohan as a witness for cross-examination purposes based on his testimony in the incorporated case.

Exhibit 1, an affidavit executed by Mrs. Gopi T. Samtani on March 30, 1972, states that Mrs. Samtani is Andy Mohan's sister; and that she has been managing the Hong Kong office of Andy Mohan, Inc., which is in the custom-made clothing business, since 1960. She

is in complete charge when he is away. Her duties include "doing" the accounts, receiving and processing the orders sent from Andy Mohan, Inc. in Honolulu, and shipping the finished garments to Honolulu. "Doing" the accounts includes "keeping a strict report of all expenses", which includes the costs of fabrics, tailoring and packing.

The tailoring work is subcontracted out to tailors in Hong Kong. She, however, supplies the outer fabric, which may be purchased by her brother or herself. The copies of the orders she receives from her brother indicate the measurements, articles to be made, and type of fabric to be used. She notes on the copy the number of yards of fabric given to the tailor for the particular article to be made, and, if available, a swatch of the fabric. To cover her overhead expenses, she adds 10 percent to the cost of the fabric before calculating the final price of the article to which she adds another 10 percent markup.

In her affidavit Mrs. Samtani states that all of the articles in the instant shipment were made by Arta's Clothes. She states that, "from my accounts which I personally keep", she knows that in December 1964 and January 1965, Arta's charges, which included furnishing buttons, zippers and lining, were HK$78 for a suit consisting of a jacket and slacks, HK$18 for slacks, HK$60 for a jacket, and HK$20 for a vest.

Mrs. Samtani also stated that, "as shown by the accounts" which she "personally kept in the regular course of business", the shipment at bar was packed in a simple box which cost HK$2 for the box and packing paper, and HK$1 for the string and gum tape.

Based on her 10 years' experience with the firm, the tailors to whom she subcontracts the work have taken no more than two weeks to finish any article of men's clothing.

During December 1964 and January 1965 the cost of the fabric that she delivered to the tailors varied slightly depending on the quality purchased. According to her accounts, which she "personally kept", her firm paid HK$15 per yard for fabric of the quality of 55% dacron and 45% wool used in the men's clothing listed on order numbers AMH 6449 and AMH 6447, HK$13 per yard for the quality of 55% dacron and 45% wool used in the suit shown on order number AMH 6487, HK$16 per yard for fabric of the quality of 55% terylene and 45% wool used in the suit listed on order number AMH 3683, and HK$16 per yard for fabric of the quality of 100% wool used in the formal jacket shown on order number AMH 3690.

From her experience, a suit, consisting of a jacket and slacks, requires from 2⅞ to 3¼ yards of fabric for regular sizes; a vest usually requires ¾ of a yard, and slacks require from 1⅜ to 1½ yards. Her copies of the orders covering the shipment in issue show that the following number of yards were delivered to the tailor:

AMH 6487	one black suit	2⅞ yards
AMH 6477	one grey suit with vest	3¾ yards
AMH 6477	extra grey slacks	1½ yards
AMH 6477	one black suit with vest	3¾ yards
AMH 6477	extra black slacks	1½ yards
AMH 3683	one black suit	3½ yards
AMH 3690	one formal jacket	2 yards

Since her brother, Andy Mohan, requested her copy of AMH 6449 several years ago, she was unable to state the yardage delivered to the tailor for the suits covered by that order.

Exhibit 2, an affidavit executed on September 5, 1971, by Mr. Leung See Hing, principal official of Arta's Clothes in Hong Kong, states that he did the billing. From December 1964 through January 1965 his firm's "making charge" for clothing made of dacron and wool, terylene and wool, or all wool was HK$78 for a suit, consisting of a jacket and slacks, HK$18 for slacks, HK$60 for a jacket, and HK$20 for a vest. These charges included furnishing the buttons, thread, zippers and lining cloth. The outer fabric was always supplied by Andy Mohan, Inc. when it placed orders with Arta's Clothes. During this same period his firm was able to complete delivery of each garment to Andy Mohan, Inc. within one week of receipt of the fabric.

Mr. Mohan testified that he purchased most of the fabrics for his firm. He bought them in varying quantities from wholesalers and retailers in several countries, and their prices varied according to quality, quantity and fashion demand. He also indicated that the cost of the same fabric might vary weekly or monthly depending upon availability and other factors.

He agreed that synthetic fabrics used in men's suits vary in quality. He identified exhibit A, a swatch of fabric, as a mixture of polyester and wool, which differed in texture and was of better quality than, exhibit B, a fabric swatch he characterized as having "more wool and, possibly, some kind of mixture." He was unable to identify another fabric swatch (exhibit C).

The witness agreed that incorporated exhibit 16, an invoice dated December 16, 1964, which was made out to Andy Mohan for 86-¼ yards of grey, navy blue and blue English terylene and wool fabric at HK$16 per yard, was a typical invoice from a fabric supplier to his firm. He stated that he could not identify the weave of that material from the invoice "because there is [sic] various kinds."

Mr. Mohan testified that the records made in the regular course of business of his Hong Kong and Honolulu firms during the last quarter of 1964 and during 1965 consisted of initial order forms, invoices for fabric, invoices from tailors, the daily cash books, customs

invoices and correspondence. However, except for some documents received as exhibits in the incorporated case, and copies of customer order numbers AMH 6383, 6390, 6449, 6477 and 6487 (collective exhibit E) covering nine of the garments in the present case, the witness was unable to produce any business records or documents of the Andy Mohan Hong Kong office for the relevant period. With the exceptions noted, Mr. Mohan explained that, since his Hong Kong office does not carry its records "more than three years", all of these records had been destroyed.

Incorporated exhibit 4, relied upon by plaintiff, appears to be another copy of AMH 6449, which indicates that 2⅞ yards of dacron and wool fabric were used to make each of the two suits therein which were part of the present shipment. Incorporated exhibit 12, also cited by plaintiff, is an invoice dated December 12, 1964, made out to Andy Mohan, Hong Kong, for 45 yards of dacron and wool fabric (percentage content and color not shown) at HK$10.50 per yard and 69¼ yards of terylene and wool fabric (color not indicated) at HK$16 per yard.

Plaintiff relies upon the Samtani and Hing affidavits which, it claims, coupled with exhibits 4, 12 and 16 and the testimony of Mr. Mohan, as summarized by Judge Landis in the incorporated case, remedy the deficiencies of proof in the earlier case and establish the values claimed for the articles at bar.

Notwithstanding the zeal and vigor with which plaintiff's counsel has pursued his client's cause, the court nonetheless, upon review of the entire record, is constrained to find that plaintiff has failed to meet its burden of proof.

In value cases, particularly where cost of production (section 402a(f), Tariff Act of 1930) or constructed value is in issue, the evidence offered by the parties, especially the cost records and related documents, has always been subject to careful scrutiny by the court. See e.g., *Frank P. Dow Co., Inc., et al.* v. *United States*, 376 F. Supp. 1013, 59 Cust. Ct. 697, R.D. 11370 (1967), *modified by stipulation*, 60 Cust. Ct. 758, R.D. 11469 (1968); *Descoware Corp. (Westland)* v. *United States*, 58 Cust. Ct. 698, R.D. 11297 (1967); *General Wool Co., Inc., et al.* v. *United States*, 56 Cust. Ct. 730, R.D. 11177 (1966), *aff'd*, 60 Cust. Ct. 970, A.R.D. 240 (1968). All elements of a claimed statutory value, whichever it may be, must be established by substantial competent evidence. *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955); *Brooks Paper Co.* v. *United States*, 40 CCPA 38, C.A.D. 495 (1952).

Thus, under the constructed value formula, plaintiff must establish by appropriate evidence the cost of containers and wrapping as well as the costs of material and of fabrication. It is settled that the

two last named costs must be based on the costs of material and labor that would have been incurred at the latest time which would normally permit the manufacture of the articles under consideration for delivery on January 16, 1965, the date of export. *Charles Stockheimer, Inter-Maritime Forwarding Co., Inc.* v. *United States*, 44 CCPA 92, C.A.D. 642 (1957); *Andy Mohan, Inc.* v. *United States*, *supra*.

The record herein, however, not only fails to rectify the evidentiary deficiencies cited by the trial court in the incorporated case but also creates ambiguities, and reveals unexplained discrepancies in the testimony.

For example, in attempting to establish the cost of fabricating the garments. Mr. Mohan had testified in the earlier case, which was heard in March 1968, that he paid the tailor 80 Hong Kong dollars for making a suit, and either 20, 18 or 14 Hong Kong dollars for slacks, depending upon the fabric content. However, in September 1971, Mr. Leung See Hing, the principal officer of the tailoring firm, stated in his affidavit (exhibit 2) that from December 1964 through January 1965 his firm charged HK$78 for a suit and HK$18 for a pair of slacks, regardless of the fabric content. Yet Mr. Mohan, testifying at the January 1973 trial of this case, reiterated his previous statement that during the two-month period in question he had paid the tailors HK$80 for making a suit. At no time was the variance between his testimony at both trials, and that of the affiant as to the cost of fabricating the articles, ever explained. As Judge Landis had noted, the paid bills would "have been the best evidence of what Mr. Mohan paid" (63 Cust. Ct. at 604). Nonetheless, although the witness indicated that they were available, they were not introduced into evidence, nor were they offered at the present trial.

Mrs. Samtani also testified in her March 1972 affidavit (exhibit 1) to the prices paid the tailoring firm during the period in issue for making garments of the kind at bar, stating that she knows these figures "*from my accounts which I personally keep*". Those accounts, however, were nonexistent in 1972 as the Hong Kong office did not retain its records for more than three years. The court has been given no explanation how Mrs. Samtani was able to construct the details of the varying cost items attached to her 1972 affidavit from records which, according to Mr. Mohan, had been destroyed four years earlier. Hence, her testimony can be accorded but little weight.

The same difficulty exists as to the cost of packing. Mrs. Samtani's assertions as to the cost of the box, packing paper, string and gum tape used in packing the shipment at bar were based on "the accounts I personally kept in the regular course of business". Without further explanation as to when and how she examined those records, which

Mr. Mohan was unable to produce under subpoena, because they were no longer in existence, the court cannot give her statements any credence. The same may be said of Mrs. Samtani's statements as to the quality of the fabrics used in the imported garments and their costs. The invoices for fabrics (inc. exhs. 12 and 16), relied upon by plaintiff, are of little help in establishing the costs of the materials actually used in these articles.

Apart from the foregoing discrepancies, the present record is defective in another respect. The testimony offered as to costs of fabrication and of packing consists solely of conclusory statements which are totally unsupported by evidentiary facts. The following statements from the case of *Brooks Paper Company* v. *United States*, 40 CCPA 38, C.A.D. 495 (1952) are pertinent:

> "* * * 'Evidentiary facts' must be found from the testimony or other evidence. 'Ultimate facts' are reasoned conclusions drawn from the evidentiary facts. *Commissioner of Internal Revenue* v. *Sharp et al.*, 91 F. (2d) 804, C. C. A. 3. Considered with reference to the facts or evidence by which they are established or proved, 'ultimate facts' are but the logical results of the proofs, or, in other words, mere conclusions of fact reached by the processes of logical reasoning from the evidentiary facts. * * *
>
> "The Supreme Court has defined 'substantial evidence' as evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred. Substantial evidence, said the Court further, is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292.
>
> "Under this test of substantial evidence we think it clear that a mere declaration of an essential ultimate fact in issue is not substantial evidence. * * * it seems clear that ultimate facts cannot at the same time also be the facts which afford a substantial basis of fact from which the fact in issue can be reasonably inferred. * * *" 40 CCPA at 45.

To the same effect, see *Kobe Import Co.* v. *United States*, 42 CCPA 194, C.A.D. 593 (1955).

The Samtani affidavit is palpably deficient in that it is based upon records which were destroyed four years earlier. The Hing affidavit fails to provide the court with those evidentiary facts upon which the stated conclusions are based. The affiant's assertions about transactions which took place over six years earlier are unsupported by any reference to books of account, price lists, letters, invoices or other documents.

In short, the present record fails to meet the evidentiary standard of proof required by the applicable judicial authorities. *Brooks Paper*

Company v. *United States*, 40 CCPA 38, C.A.D. 495 (1952). See also *General Wool Co., Inc., et al.* v. *United States*, 56 Cust. Ct. 730, R.D. 11177 (1966), *aff'd*, 60 Cust. Ct. 970, A.R.D. 240 (1968).

In view of the court's findings it is unnecessary to deal with those aspects of plaintiff's case stressed in defendant's brief. Likewise, it is unnecessary to treat plaintiff's alleged failure to make information available to defendant pursuant to a request for production.

For the foregoing reasons, the appraised values are affirmed, and the appeal for reappraisement is dismissed. Judgment will be entered accordingly.

(C.D. 4594)

THE TWIN WINTONS *v.* UNITED STATES

Ceramic products (decanters)

STONEWARE—CLAY AS ESSENTIAL INGREDIENT—OPACITY

Ceramic ware decanters exported from Japan and classified upon entry at New Orleans, La. as nonbone chinaware under TSUS item 533.71 as modified. Evidence that the imported merchandise had distinguishing features from chinaware in that it had clay as an essential ingredient, was off-white and opaque within the tariff definition of stoneware, was established.

HELD, the decanters are dutiable as claimed under TSUS item 533.31 as modified, as fine-grained stoneware.

Court No. 72-5-01088

Port of New Orleans

[Judgment for plaintiff.]

(Decided April 24, 1975)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*David A. Ast* and *Frank Desiderio*, trial attorneys), for the defendant.
Lamb & Lerch (*David A. Golden*) *amicus curiae.*

RICHARDSON, Judge: The merchandise in this case, described on the invoices as "Hillbilly Decanters" and tops and "Rebel Yell Horseman Decanters" and tops, and exported from Japan, was entered at the port of New Orleans, La., between July, 1969 and May, 1970, and classified in liquidation under TSUS item 533.71 as modified by T.D. 68-9 as nonbone chinaware decanters at the duty rate of 36 *per centum* or 31 *per centum ad valorem*, depending upon date of entry. The plaintiff-importer contends in this action that the imported merchandise should be classified under TSUS item 533.31 as modified

by T.D. 68–9 as fine-grained stoneware decanters at the duty rates of 8 cents per dozen plus 20 *per centum ad valorem* or 7 cents per dozen plus 17 *per centum ad valorem*, depending upon date of entry.

The competing tariff provisions read:

[classified]		
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:	
	* * * * * *	
	Of nonbone chinaware * * *:	
	* * * * * *	
	Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:	
533.71	* * * decanters * * *----------	36% ad val. [or] 31% ad val.
[claimed]		
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:	
	* * * * * * *	
	* * * of fine-grained stoneware:	
	* * * * * * *	
	Not available in specified sets:	
533.31	* * * decanters * * *------	8¢ per doz. pcs. + 20% ad val. [or] 7¢ per doz. pcs. + 17% ad val.

And Headnotes 2 (a), (c), (e), (g) and (i) of Part 2 of Schedule 5, TSUS, read:

2. For the purposes of the tariff schedules—

(a) a "ceramic article" is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure, which body is composed essentially of inorganic nonmetallic substances and either is formed from a molten mass which solidifies on cooling, or is formed and subsequently hardened by such heat treatment that the body, if reheated to pyrometric cone 020, would not become more dense, harder, or less porous, but does not include any glass article;

* * * * * * *

(c) the term "stoneware" embraces ceramic ware whether or not glazed or decorated, having a fired body which contains clay

as an essential ingredient, is not commonly white, will absorb not more than 3.0 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when fully vitrified;

* * * * * * *

(e) the terms "chinaware" and "porcelain" embrace fine-grained ceramic ware (other than stoneware), whether or not glazed or decorated, having a body which is white (unless artifically colored) and will not absorb more than 0.5 percent of its weight of water;

* * * * * * *

(g) the term "nonbone chinaware" embraces chinaware or porcelain other than bone chinaware;

* * * * * * *

(i) the term "fine-grained", as applied to ceramic wares, embraces such wares having a body made of materials any of which had been washed, ground, or otherwise beneficiated;

* * * * * * *

The record in the case consists of the testimony of two witnesses and four exhibits offered on plaintiff's behalf, and the testimony of three witnesses and two exhibits offered on defendant's behalf. And it was stipulated by the parties at the trial (1) that the imported merchandise is fine-grained ceramic ware, (2) that it is identical in composition and production, (3) that no color additives were used prior to the addition of any glaze in the production of the body of the merchandise, and (4) that the merchandise absorbs less than 0.5 per cent by weight of water when tested according to the procedures set forth in ASTM C373–56. Thus, the identity of the composition of the body of the imported decanters is the residual issue to be resolved in determining whether they should be classified as chinaware or stoneware.

On the matter of body composition Ross H. Winton, a sculptor employed by plaintiff, testified that plaintiff placed its order with the Japanese manufacturer for porcelain decanters to be made up from wax models which his brother designed, but instead agreed to accept stoneware decanters in an off-white color when it developed that the manufacturer indicated that it was not equipped to produce porcelain because it lacked the proper kilns and offered to supply stoneware decanters as a substitute. The witness stated that plaintiff did not specify what materials were to be used in the production of the decanters, and that he did not personnally know what went into the composition of the imported decanters (R. 22).

Also on the matter of body composition Lewis F. West, a chemist and laboratory supervisor in the employ of United States Testing Company, testified concerning the results of tests made on a sample

"Hillbilly" decanter sent to his company by the plaintiff. Mr. West testified that in order to determine whether the sample was porcelain or stoneware in the light of tariff criteria he received from the Customs Laboratory at Terminal Island, California, which defined stoneware as "white, opaque pottery, glazed or unglazed, with a maximum of 3 percent water absorption" and defined porcelain as "white, translucent pottery, glazed or unglazed, with a maximum of ½ percent water absorption", he conducted a physical examination, made a water absorption test, and had a major metals content test performed by a company branch laboratory using emission spectrophotography. He described emission spectrophotography as consisting "of taking a . . . sample and putting it on the surface of a carbon electrode . . . into contact so as to form an arc. Now, this arc is extremely hot and volatilizes the sample. The light given off would be characteristic of the materials in the sample because of the atomic absorption of the different materials." On the basis of his examination the witness stated that he found the body of the decanter to be clay, opaque, and off-white in color. He said that the water absorption test showed that the decantor absorbed less than 0.3 percent of its weight in water. The major metals test revealed that the sample contained 29% silicon, 14% aluminum, 1.7% calcium, 3% potassium, and 1.7% sodium. Mr. West testified that all other metals present were only in trace amounts (i.e., twenty parts per million or less). He stated that clay is composed of metallic silicate, mostly aluminum, and that the major metals test results conformed to the definition of clay. The witness concluded that the sample was stoneware because of the opacity of the material. He said you cannot see through opaque material as light is not transmitted through it, while material that is translucent transmits enough light for a person to make out a silhouette or outline.

The testimony of other witnesses in the case does not deal with the imported merchandise *per se*. In general, the testimony of these witnesses concerns itself with characteristics of various types of clay used in making chinaware and stoneware by companies with which the witnesses were associated or employed.

Harry W. Thiemecke, former ceramic engineer and director of research of Homer Laughlin China Company prior to retirement in 1972, testified that ball clays have significant amounts of iron or titanium and fire off-white; that china clay (kaolin) has less than one percent of iron or titanium and fires white. Fire clay, depending upon the amount of iron present in the clay would fire ivory, or tan or red in an oxidizing condition, or on the gray side in a reducing condition. On cross-examination he stated that plaintiff's exhibit 1 was opaque, and not translucent.

Clifford R. Stowell, Jr., vice president of operations of Western Stoneware Company in Monmouth, Ill., whose principal experience

was in management and supervision and not in the technology of production, was of the opinion that the only true stoneware is that which is produced from natural clay bodies and not from prepared bodies. However, the witness stated that he was not an expert on body composition of stoneware because he had not worked in a ceramics laboratory where bodies and glazes are developed.

Edith Heath, founder of Heath Ceramics which currently employs 50 people in the manufacture of stoneware, dinnerware, casseroles, ashtrays and architectural tiles using a one body formula, testified that her specialty is body composition. She said that stoneware is manufactured from fire clays and iron-bearing ball clays and not from white clays, and that she has never made stoneware with an off-white body, nor had she ever seen a white stoneware body. She also stated that porcelain or china was not necessarily translucent, that she has made porcelain that was both translucent and opaque; that translucency [caused by fineness of grain of material] depends upon the thinness and porosity of the ceramic ware; and that opacity in stoneware is due to the coarseness of the grind of the particles.

Plaintiff argues that the major distinction between chinaware and porcelain on the one hand and stoneware on the other is that the body of the former is translucent while the body of the latter is opaque, that the imported decanters fall within the statutory definition of stoneware because they are opaque, and that an inspection of the body of the decanter reveals that it has not been fired so that the glass formers have been fused to a state of translucency as with chinaware.

Defendant argues, among other things, that plaintiff has failed to establish that clay is an essential ingredient of the imported decanters.

Amicus curiae argues, among other things, that "if the article has a white body then it is not 'stoneware' ".

In deciding whether the imported ceramic articles, decanters, are chinaware or stoneware the court must be guided by the express language of the tariff schedules defining chinaware and stoneware. *Morganite, Inc.* v. *United States*, 62 Cust. Ct. 387, C.D. 3778 (1969). Also, both parties agree that the classification of the decanters is controlled by the statutory definitions contained in headnotes to Schedule 5, Part 2.

The stipulation of the parties set out in the beginning of this opinion covers the respects in which the two articles are similar. The ways in which they differ are as follows:

Chinaware		Stoneware
white (unless artifically colored)	–	not commonly white
	–	has clay as an essential ingredient
	–	is opaque

In the opinion of the court the color of the imported decanters is not determinative of whether or not they are susceptible to classification under item 533.31 as claimed. The phrase "not commonly white" appearing in item 533.31 does not preclude the possibility that stoneware bodies may fire white, while recognizing that the bulk of articles responding to the designation "stoneware" usually possess non-white bodies. Under the TSUS clay is an essential ingredient of stoneware articles although it doesn't have to be an ingredient of other types of ceramic ware. See *Morganite, Inc.* v. *United States*, *supra*. And, on the basis of evidence in this record whether or not a stoneware body fires white would depend upon the presence or absence of iron or titanium in the clay of which it is composed. Thus, the color of a stoneware body would appear to be a function of the potter's intention (as manifested through ingredient control) rather than an innate characteristic of his product. And this is apparently reckoned with in the statutory language "not commonly white", which certainly leaves the door open for the admittance of white-bodied stoneware, whether a visual examination leads one person to describe an article as "white" or "off-white".

The next question before the court is whether plaintiff has shown that clay is an essential ingredient in the imported decanter. The plaintiff produced no evidence as to how the imported decanters were manufactured or of what material or materials they were manufactured. It relied upon the test results discussed in the testimony of the witness West and reflected in the laboratory report received in evidence as exhibit 2, which shows the main part of the body to be clay material, which is some evidence that clay is an essential ingredient of the decanter.

All of the witnesses, for both the plaintiff and the defendant, conceded that exhibit 1 is opaque.

The stipulation of the parties together with the evidence showing the imported merchandise to have clay as an essential ingredient, to be off-white and to be opaque brings it within the tariff definition of stoneware in Schedule 5, Part 2, and it should be classified as claimed under TSUS item 533.31 as modified by T.D. 68–9 as fine-grained stoneware decanters.

The court concludes that the plaintiff has established that the classification of the imported merchandise as chinaware was not proper. By distinguishing on the record the difference between chinaware or porcelain and stoneware, and establishing that the imported merchandise is stoneware, the plaintiff has also negatived the possibility of its being chinaware.

(C.D. 4595)

SUMITOMO SHOJI NEW YORK, INC. *v.* UNITED STATES

Synthetic rubber articles

The imported rubber boots, overshoes, artics, sandals and clogs are stipulated to be in chief value of synthetic rubber containing carbon which blackens and strengthens the synthetic rubber.

Held. The articles are properly classifiable under paragraph 1558 as articles manufactured in whole or in part of synthetic rubber, rather than under paragraph 216 as articles composed wholly or in part of carbon, *Rettinger Raincoat Mfg. Co.* v. *United States*, 57 CCPA 119, C.A.D. 989 (1970), cited and discussed.

Court Nos. 65/11176, etc.

Port of New York

[Plaintiff's motion granted.
Defendant's motion denied.]

(Decided May 2, 1975)

Rode & Qualey (*Ellsworth F. Qualey* and *William E. Melahn* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

LANDIS, Judge: These protest actions, involving merchandise imported from Japan and entered at New York during the period 1962–1963, were consolidated without objection and submitted for decision on cross-motions for summary judgment filed in 1974. The actions were brought in this court in the year 1972 and involve the customs classification, under the Tariff Act of 1930, as modified, of black colored articles in chief value of synthetic rubber, variously described as synthetic rubber boots, overshoes, artics, sandals, and clogs.

Customs classified the merchandise under paragraph 216 of the Tariff Act, as modified by T.D. 51802, viz:

Tariff Act of 1930, paragraph	Description of Products	Rate of Duty
216	Articles or wares composed wholly or in part of carbon or graphite, wholly or partly manufactured, not specially provided for	15% ad val.

Plaintiff seeks judgment classifying the merchandise under paragraph 1558 of the Tariff Act of 1930, as modified by T.D. 54108, viz:

Tariff Act of 1930, paragraph	Description of Products	Rate of Duty
1558	All articles manufactured, in whole or in part, not specially provided for: Synthetic rubber and synthetic rubber articles * * *----------	8½% ad val.

No material facts that I can discern are in issue. It is agreed, on these cross-motions, that the imported merchandise consists of black colored articles in chief value of synthetic rubber which contains carbon and that the carbon, in addition to pigmentation, i.e., serving to color the footwear black, does add substantial additional qualities to the footwear, such as reinforced tensile strength, abrasion resistance, tear resistance, and increased hardness.

The issue is, therefore, whether the imported merchandise which is in chief value of synthetic rubber, but which contains carbon that colors the article black and, in this case, also reinforces the rubber against wear and tear, is properly dutiable under paragraph 216 as an article *composed in part* of carbon, not specially provided for, or properly dutiable under paragraph 1558, as modified by T.D. 54108, as synthetic rubber articles manufactured in whole or in part, not specially provided for.

The issue herein has roots in two cases decided on appeal and discussed by both sides in this continuing dispute between importers and the defendant over the classification of articles wholly or in chief value of synthetic rubber. Defendant lost both previous cases, where the articles, wholly or in chief value of synthetic rubber, were raincoats. Defendant lost the first case by decision holding that raincoats, wholly or in chief value of synthetic rubber, *containing no carbon*, were not dutiable by similitude (paragraph 1559) to articles of india rubber (paragraph 1537(b)), as classified by customs, but properly dutiable as synthetic rubber articles under paragraph 1558, as modified. *United States* v. *Weather-Rite Sportswear Co., Inc.*, 52 CCPA 7, C.A.D. 848 (1964). Defendant lost the second case by decision holding that raincoats, in chief value of synthetic rubber, containing a small per-

centage of carbon which, however, added no property to the raincoats other than to color them black, were not dutiable under paragraph 216 as articles wholly or in part of carbon, not specially provided for, as classified by defendant, but were properly dutiable as articles manufactured in whole or in part of synthetic rubber, not specially provided for, under paragraph 1558. *Rettinger Raincoat Mfg. Co.* v. *United States*, 57 CCPA 119, C.A.D. 989 (1970).[1] The *Rettinger* case also apparently overruled the following decisions of this court, viz: *Weather-Rite Sportswear Co., Inc.* v. *United States*, 49 Cust. Ct. 180, Abstract 66910 (1962); *Miller Harness Co., Inc.* v. *United States*, 59 Cust. Ct. 1, C.D. 3053, 270 F. Supp. 823 (1967); *J. M. Rodgers Co., Inc.* v. *United States*, 60 Cust. Ct. 42, C.D. 3251 (1968).

Defendant urges that the "unequivocal basis for denying classification under paragraph 216 was the material fact (stipulated therein) that the *Rettinger* merchandise contained free carbon 'for the purpose of producing the black color and it [the carbon] * * * [added] no other property to the merchandise'." [2]

"In plaintiff's view of this case [under the *Weather-Rite* and *Rettinger* decisions, *supra*] it matters not whether the imported articles contain carbon or do not contain carbon or what purpose the carbon serves in the merchandise, if any. The only criterion for classification, plaintiff submits, is whether the articles are in chief value of synthetic rubber." [3]

The springboard for the argument in this case is, quite obviously, first, the underlying basis of the decision in the *Rettinger* case and, second, how it applies to the classification of the article footwear in this case.

In *Rettinger*, *supra*, the court of appeals stated as follows:

> The Customs Court overruled the appellant's protest and held that the merchandise was properly classified under paragraph 216, as assessed, as articles composed wholly or in part of carbon or graphite not specifically provided for.
>
> The court apparently felt itself bound by prior Customs Court decisions in which articles containing small amounts of carbon used only for coloring purposes had been held to be properly classified under paragraph 216. See *Weather-Rite Sportswear Co.* v. *United States*, 49 Cust. Ct. 180, Abstract 66910 (1962), *J. M. Rodgers Co.* v. *United States*, 60 Cust. Ct. 42, C.D. 3251 (1968).

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[1] See also, *Weather-Rite Sportswear Co., Inc.* v. *United States*, 67 Cust. Ct. 237, C.D. 4280 (1971) (synthetic rainwear), the latest in depth review by this court of the case history on the classification of synthetic rubber articles, and sustaining importer's claim under paragraph 1558.

[2] Defendant's brief, page 3.

[3] Plaintiff's memorandum in opposition to defendant's cross-motion for summary judgment, page 1. Defendant in a reply to plaintiff's opposition, states that "it is sufficient to note that such concept is unsupported by any decision, and is indeed rebutted by the very existence of paragraph 216, which provides for articles in part of carbon * * *."

Miller Harness Co., Inc. v. *United States*, 59 Cust. Ct. 1, C.D. 3053, 270 F. Supp. 823 (1967).

We do not agree.

This court has previoulsy held rainwear in chief value of synthetic rubber as properly classifiable under provisions of paragraph 1558 of the Tariff Act of 1930. *United States* v. *Weather-Rite Sportswear Co.*, 52 CCPA 7, C.A.D. 848 (1964). The rainwear in that case was yellow in color and contained no carbon. In the present case, the rainwear is different only in that it is black in color and contains a small percentage of carbon solely for the purpose of producing that black color. It is stipulated that the carbon adds no other property to the imported merchandise. It is further stipulated that the protested black rainwear "is bought and sold at the same price and has the same use as synthetic rainwear of other colors such as olive drab, yellow or red." Under these facts, we find it inconceivable that Congress would have intended that result which the decision below calls for.

"[I]t is an elementary rule of construction that all the parts of an act relating to the same subject should be considered together, and not each by itself". Also "[a] statute must receive such reasonable construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object." 2 Sutherland, Statutory Construction, §§ 344, 368 (Lewis ed. 1904). See also, *Jana Sales Co., Inc.* v. *United States*, 56 CCPA 24, C.A.D. 947, 402 F.2d 1014 (1968).

Furthermore, paragraph 216 uses the language "* * * articles or wares composed wholly or in part of * * *". The term "composed of" has been held to mean "made of" or "manufactured from" or "manufactured of", *United States* v. *Accurate Millinery Co.*, 42 CCPA 229, C.A.D. 599. We are confident that Congress would not have used the words "composed of" if it had intended to encompass in this provision articles in which carbon served only as a coloring agent.

In summary, we hold that when paragraph 216 is viewed as a whole, the conclusion is required that it was not intended to encompass articles such as are in issue here. Therefore the judgment of the Customs Court is *reversed*. [57 CCPA, pages 121–122.][4]

The *Rettinger* decision holds that articles of rainwear in chief value of synthetic rubber, containing a small amount of carbon to color the rainwear black, are properly classifiable under paragraph 1558, as articles manufactured in whole or in part of synthetic rubber, rather than under paragraph 216, as articles composed wholly or in part of carbon. The articles in this case are in chief value of synthetic

[4] Compare, *Northam Warren Corp. et al.* v. *United States*, 60 CCPA 117, C.A.D. 1092 (1973), where the court of appeals affirmed that pearl essence pigment containing 0.15 percent of a coal-tar derivative for a specified purpose was not within the *de minimis* rule of classification and was, therefore, properly dutiable as a mixture *consisting in part of* coal tar under paragraph 27(a), as modified, rather than as pearl essence under paragraph 66, as modified.

rubber and contain an undisclosed amount of carbon to color the articles black and, in addition, give a measure of strength, abrasive resistance and hardness to the articles. If rainwear in chief value of synthetic rubber with a small amount of carbon added for purpose of color is not classifiable under paragraph 216, I find it difficult to conclude that footwear in chief value of synthetic rubber with an undisclosed amount of carbon added is properly classifiable under paragraph 216.[5] For tariff purposes, the added carbon in *Rettinger* did not change articles of rainwear in chief value of synthetic rubber into articles of rainwear composed in part of carbon. I am of the opinion that the footwear in this case is on the same level as rainwear with respect to the statement in *Rettinger*, namely, that paragraph 216 "was not intended to encompass articles such as are in issue here."

Plaintiff's motion for summary judgment is, accordingly, granted. Defendant's cross-motion is denied.

Judgment will so enter.

(C.D. 4596)

MONTGOMERY WARD & CO., INC. *v.* UNITED STATES

Clock-radios

RADIO RECEPTION APPARATUS—SOLID-STATE (TUBELESS) CLOCK-RADIOS (ITEM 685.23)

The superior heading to items 685.10 through 685.50, TSUS, covers certain enumerated articles, including radio reception apparatus "whether or not incorporating clocks or other timing apparatus". The "whether or not" phrase modifies or qualifies all of the article descriptions inferior to the superior heading, including item 685.23, which item covers "Solid-state (tubeless) radio receivers". Therefore, solid-state (tubeless) clock-radios were properly classified under item 685.23, rather than under item 685.25, or item 685.50, as claimed by plaintiff.

RADIO RECEPTION APPARATUS—TRADE AGREEMENT MODIFICATION OF TARIFF SCHEDULES

Where the tariff schedules are modified by executive action pursuant to a trade agreement, a newly created article description (viz., item 685.23) indented below a superior heading must be deemed subject to and qualified by the terms of its superior heading, unless otherwise provided. There is no evidence that the trade agreement negotiators intended that item 685.23 be excepted from the "whether or not" phrase of the superior heading. Consequently, item 685.23, TSUS, providing for "Solid-state (tubeless) radio

[5] The observation in *Rettinger* that the term "composed of" [which is found in 216] has been held to mean "made of" or "manufactured from" or "manufactured of" does not exclude the application of 1558 when it is realized that 1558 similarly provides for "articles manufactured."

receivers", inserted into the schedules by Presidential Proclamation 3822, T.D. 68–9 (Kennedy Round), must be deemed subject to and qualified by the phrase in the superior heading "whether or not incorporating clocks or other timing apparatus", no contrary intent having been expressed. Accordingly, solid-state (tubeless) clock-radios are properly classifiable under item 685.23, rather than under item 685.25, or item 685.50, as claimed by plaintiff.

COMBINATION ARTICLES—CLOCK-RADIOS—HEADNOTE 5 OF SCHEDULE 7, PART 2, SUBPART E

The "whether or not" phrase in the superior heading preceding items 685.10 through 685.50 qualifies all of the provisions subordinate to the superior heading. Accordingly, item 685.23 covers solid-state (tubeless) clock-radios; and, in the words of headnote 5, schedule 7, part 2, subpart E, is the "provision applicable to such combination article".

COMBINATION ARTICLES WITHIN THE PURVIEW OF ITEM 685.50

The combination articles covered by item 685.50, TSUS, are not those created by incorporating a clock or other timing apparatus in an article. Rather, the combination articles within the scope of item 685.50 are those created by a combination of some of the articles mentioned in the heading *antecedent* to the phrase "or any combination thereof, *whether or not* incorporating clocks or other timing apparatus". (Emphasis added.) *Tariff Classification Study Explanatory and Background Materials* (November 15, 1960), schedule 6, part 5, page 305, cited. Consequently, clock-radios are not dutiable under item 685.50, as claimed by plaintiff.

Court No. 71–8–00931

Port of New York

[Judgment for defendant.]

(Decided May 21, 1975)

Barnes, Richardson & Colburn (*Irving Levine* and *Earl R. Lidstrom* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Gilbert Lee Sandler*, trial attorney), for the defendant.

NEWMAN, Judge: This civil action concerns the proper rate of duty on certain solid-state (tubeless) clock-radios [1] imported from Japan and entered at the port of New York in 1970. The regional commissioner classified the merchandise under item 685.23 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68–9, and assessed duty at the rate of 11 per centum ad valorem. In liquidating the entry, the clock movements were constructively separated from the radio receivers and assessed with duty in accord-

[1] Invoiced as "Model 62-1971: Airline 'Digital' 9-Transistor FM/AM Clock Radio * * *".

ance with headnote 5 of schedule 7, part 2, subpart E. This aspect of the liquidation is not disputed, and in point of fact is relied upon by plaintiff in establishing its claims.

Plaintiff primarily claims that the clock-radios should have been assessed at the rate of 8.5 per centum ad valorem under item 685.25, TSUS, as modified by T.D. 68–9, or, alternatively, at the rate of 10 per centum ad valorem under item 685.50, TSUS, as modified by T.D. 68–9.

Statutes Involved

Items 685.23, 685.25 and 685.50 of the Tariff Schedules of the United States, as modified by Presidential Proclamation 3822, T.D. 68–9, read:

	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:	
	* * * * * * *	
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:	
	* * * * * * *	
	Other:	
685.23	Solid-state (tubeless) radio receivers	11% ad val.
685.25	Other	8.5% ad. val.
	* * * * * * *	
	Other:	
	* * * * * * *	
685.50	Other	10% ad. val.

Headnote 5 of schedule 7, part 2, subpart E, TSUS, so far as pertinent provides:

5. Combination articles containing watch or clock movements.—A watch or clock movement (and its dial, if any) in a combination

article is classifiable under the provision applicable to such combination article, but, in determining the duties on the combination article, the movement (and its dial, if any) shall be constructively separated therefrom and assessed with the same rate as would have applied if it has been imported separately. * * *

The Record

A representative sample of the clock-radios and an accompanying owner's instruction manual were received in evidence. Neither party presented any testimony.

The Parties' Contentions

There is no dispute that the imports comprised solid-state (tubeless) radio receivers incorporating a clock and are radio reception apparatus within the scope of the superior heading preceding items 685.10 through 685.50 (hereinafter "superior heading").

Defendant contends that, since item 685.23 is qualified by the language in the superior heading "all of the foregoing * * * whether or not incorporating clocks or other timing apparatus", solid-state clock-radios are properly dutiable under item 685.23.

Plaintiff, on the other hand, insists that item 685.23 is not qualified by the "whether or not" phrase in the superior heading because: (1) pursuant to Presidential Proclamation 3822, item 685.23 was "carved out" of former item 685.22 (which, *intef alia*, covered radio reception apparatus), and therefore, the scope of item 685.23 must be strictly construed to include only solid-state radio receivers, and to exclude combination articles like clock-radios; and (2) "Solid-state (tubeless) radio receivers" are not enumerated *eo nomine* in the superior heading.

Primarily, it is claimed by plaintiff that solid-state clock-radios are properly dutiable under item 685.25 since that item covers, *inter alia*, radio reception apparatus (except that covered by item 685.23) and is modified by the "whether or not" phrase in the superior heading. Plaintiff's alternative claim is predicated upon "legislative history demonstrating that Congress expected clock-radios to be classified, as alternatively claimed, as other combination articles under item 685.50, TSUS".

The Issues

1. Is the "whether or not" phrase in the superior heading applicable to item 685.23?

2. If the clock movements exclude clock-radios from classification under item 685.23, are clock-radios properly dutiable under item 685.25, as primarily claimed, or under item 685.50, as alternatively claimed?

I have concluded that item 685.23 covers solid-state (tubeless) radio receivers, whether or not incorporating clocks or other timing apparatus. Therefore, the subject merchandise was properly classified by the regional commissioner.

PLAINTIFF'S CLAIM UNDER ITEM 685.25

In the original Tariff Schedules of the United States, effective August 31, 1963, item 685.22 read as follows:

	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:	
*	* * * * * *	
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcastitg and television transmission and reception apparatus, and parts thereof:	
685.20	Television apparatus, and parts thereof	* * *
685.22	Other	* * *

There is no dispute that item 685.22 covered, *inter alia*, radio reception apparatus, whether or not incorporating clocks or other timing apparatus. *Ergo*, clock-radios were originally dutiable under item 685.22. However, pursuant to Presidential Proclamation 3822, T.D. 68–9 (Kennedy Round), effective January 1, 1968, item 685.22 was deleted from the schedules, and in lieu thereof two new article descriptions (items 685.23 and 685.25) were indented below an inferior heading "Other". In effect, then, item 685.22 was subdivided into two new merchandise classifications: item 685.23, for "Solid-state (tubeless) radio receivers"; and item 685.25, covering "Other".

Plaintiff thus contends that item 685.23 was "carved out" of item 685.22 to include one specific category of merchandise, and that item 685.22 was then redesignated as item 685.25. Hence, it is plaintiff's position that merchandise formerly classifiable under item 685.22 (including clock-radios) was, with the exception of solid-state (tubeless) radio receivers (item 685.23), transferred to item 685.25. Continuing, plaintiff further contends "that when a category of merchan-

dise is carved out of an existing statutory provision, the scope of the carved provision must be strictly construed". Accordingly, plaintiff urges that "item 685.23 is limited to radio receivers and cannot be used as the classification provision for an article which contains additional features thereto [viz., clock-radios]".

Additionally, the plaintiff argues that while radio reception apparatus is among the articles specifically enumerated in the superior heading, solid-state (tubeless) radio receivers are not mentioned therein *eo nomine;* that consequently, the "whether or not" phrase in the superior heading "only alters the scope of the provision for radio reception apparatus (item 685.25) and does not enlarge a term covering merchandise not specifically enumerated in the heading (item 685.23)". Plaintiff, therefore, claims that solid-state clock-radios are properly dutiable under item 685.25 rather than item 685.23.

In sum, plaintiff's position is that the "whether or not" phrase in the superior heading qualifies item 685.25, but not item 865.23; defendant's position is that the "whether or not" phrase qualifies each and every item listed under the superior heading (including item 685.23), so that each item embraces the named article, whether or not it incorporates a clock or other timing apparatus.

I agree with defendant's position. It is difficult to conceive how Congress could better have expressed its intent that the "whether or not" phrase shall modify or qualify each and every article description subordinate to the superior heading than by utilizing the all-inclusive antecedent language "all of the foregoing, and any combination thereof". Thus, item 685.23 must be construed as if the "whether or not" phrase had been actually engrafted on that provision, to wit: "Solid-state (tubeless) radio receivers, whether or not incorporating clocks or other timing apparatus".[2]

Plaintiff concedes that if item 685.23 were a statutory provision, its scope would be "expanded" by the "whether or not" phrase of the superior heading.[3] However, even where the tariff schedules are modified by executive action pursuant to a trade agreement, a newly created article description indented below a superior heading (viz., item 685.23) must be deemed subject to the terms of its superior heading, unless otherwise provided. There is no evidence that the trade agreement negotiators intended that item 685.23 be excepted from the "whether or not" phrase. Rather, by making item 685.23 subordinate

---

[2] Similarly, item 685.30, in effect, provides; "Radio-phonograph combinations, whether or not incorporating clocks or other timing apparatus". *Cf. Velan Steam Spec. & Velan Valve Corp.* v. *United States*, 57 CCPA 58, C.A.D. 976, 420 F. 2d 1399 (1970) (parts provision in superior heading read into subordinate article description wherein parts were not expressly mentioned).

[3] There is no dispute that the superior heading has statutory status. See section 103 of the Tariff Classification Act of 1962, Public Law 87-456, 76 Stat. 72, as amended.

to the superior heading, the negotiators evinced an intent that the provision be subject thereto and to the manifest purpose of the "whether or not" phrase to render irrelevant for classification purposes the presence or absence of clocks or other timing apparatus.

Finally, plaintiff argues that under headnote 5 of schedule 7, part 2E, a combination article containing a clock (e.g., a clock-radio) must be classified under a provision of the schedules covering the combination article, and not under an *eo nomine* designation which is limited solely to one characteristic of the merchandise. Thus, plaintiff contends, "Item 685.23 is a specific *eo nomine* designation and is limited by its own terms to the article named therein; i.e., "solid-state (tubeless) radio receivers".

But again, it must be emphasized that the "whether or not" phrase in the superior heading qualifies all of the provisions subordinate to the superior heading. *A fortiori*, item 685.23 covers solid-state (tubeless) clock-radios; and, in the words of headnote 5, is the "provision applicable to such combination article".

Plaintiff's Alternative Claim Under Item 685.50

Turning now to the alternative claim under item 685.50, plaintiff contends: "Although both parties agree that the merchandise should be classified under one of the provisions indented under the heading for radio reception apparatus (either item 685.23 or item 685.25) * * * it appears from House Report 342, *supra* [H.R. Report No. 342 (May 12, 1965) accompanying H.R. 7969 (Public Law 89–241)], that in 1965 Congress understood that the combination article known as a clock-radio was classifiable under item 685.50".

H.R. Report No. 342 states, so far as pertinent (at page 37):

Tariff Schedules Technical Amendments Act

Section 53. Combination Articles Containing Watch or Clock Movements

The articles to which section 53 relates are combination articles such as clock-radios, clock-thermometer-barometer combinations, and pocket lighter-watch combinations.

* * * * * * *

2. Treatment under the tariff schedules of the United States. In the TSUS, an effort was made to treat specifically with the known popular forms of the combination articles in question which had previously been the subject of the aforementioned customs practice in item 685.50 (clock-radios) * * *.

Section 53 was renumbered section 63 in Public Law 89–241 (Tariff Schedules Technical Amendments Act of 1965) and was inserted into the tariff schedules as headnote 5 of schedule 7, part 2E.

With reference to the above-quoted comment in H.R. Report No. 342, plaintiff asserts in its brief (page 15):

> This Congressional statement of its expectation that clock-radios be classified in item 685.50 also clarifies the manner in which the phrase "all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus," in the heading was intended to operate.
>
> If a radio imported with an incorporated clock is considered a combination article (not classifiable under the provision for radio reception apparatus) a radio-phonograph combination with an incorporated clock would likewise not be classifiable under the *eo nomine* provision for radio-phonograph combinations in item 685.30. Both of these articles of merchandise would be classifiable under item 685.50 as other combination articles. It appears, therefore, that Congress intended to classify in items 685.10 through 685.42 only those precise articles named. Any article containing a clock or other timing apparatus, or any combination of the articles named in the heading but not strictly within the scope of any particular provision indented thereunder is, therefore, classifiable under item 685.50, TSUS.

Thus, plaintiff urges that Congress intended the "whether or not" phrase in the superior heading be, in effect, disregarded respecting items 685.10 through 685.42 and applied solely to item 685.50. Stated otherwise, plaintiff argues that all articles enumerated in the superior heading are classifiable in item 685.50 if they incorporate clocks or other timing apparatus. Patently, such construction is not supported by the language of the statute.

If the "whether or not" phrase had been intended to be applicable solely to item 685.50, surely the phrase would not have been included in the superior heading and prefaced with the broad inclusive language *"all of the foregoing*, and any combination *thereof"*, which language plainly is applicable to all the merchandise descriptions subordinate to the superior heading (items 685.10 through 685.50). In short, this clear statutory directive must be deemed dispositive of the legislative intent. The applicable principle was enunciated in *Aceto Chemical Co., Inc.* v. *United States*, 59 CCPA 212, 219, C.A.D. 1069, 465 F.2d 908, 913–14 (1972):

> * * * the cardinal rule of statutory interpretation is to give effect to the intent of the legislature. *United States* v. *Simon Saw & Steel Co.*, 51 CCPA 33, 40, C.A.D. 834 (1964); *United Metal Goods Mfg. Co.* v. *United States*, 46 CCPA 120, 122, C.A.D. 712 (1959). The "first and most obvious" method of ascertaining Congressional intent is to examine the statute itself, *Simon Saw &*

Steel, 51 CCPA at 40. See also *United States* v. *Border Brokerage Co.*, 48 CCPA 10, 13, C.A.D. 754 (1960); *A. W. Fenton Co.* v. *United States*, 55 CCPA 54, 58, C.A.D. 933 (1968). Where the language of the tariff provision in issue is free of ambiguity, resort to extrinsic aids of construction, such as legislative history as an indicia of legislative intent, is unwarranted. *J. E. Bernard & Co.* v. *United States*, 57 CCPA 52, 58, 420 F.2d 1403, 1407, C.A.D. 975 (1970); *Air Express International Agency, Inc.* v. *United States*, 53 CCPA 11, 14, C.A.D. 869 (1966).

Further, in *American Customs Brokg. Co., a/c Hamakua Mill Co.* v. *United States*, 58 CCPA 45, 48, C.A.D. 1002, 433 F.2d 1340, 1341 (1970), our appellate court stated:

> Regardless of what may have been intended by item 666.20, we cannot ignore the fact that the invasionary headnote to subpart A is applicable to all of part 4, including item 666.20. *We cannot use an indication of Congressional intent alone to overcome the clear meaning of the words of a statute.* * * * [Emphasis added.]

See also: *Commercial Shearing* v. *United States*, 59 CCPA 203, 206, C.A.D. 1067, 464 F.2d 1048 (1972); *Great Western Sugar Co.* v. *United States*, 59 CCPA 56, C.A.D. 1038, 452 F.2d 1394 (1972).

However, if extrinsic aids of construction, such as legislative history, are warranted, I believe the following significant comment in the *Tariff Classification Study Explanatory and Background Materials* (November 15, 1960), schedule 6, part 5, page 305,[4] indicates the scope of item 685.50 intended by its framers:

> Item 685.10 covers television cameras * * *. Item 685.20 covers radio telegraphic and radio telephonic transmission and reception apparatus and radio broadcasting and television transmission and reception apparatus. * * * Item 685.30 covers record players, phonographs, radio-phonograph combinations, record changers, turn-tables and tone arms. * * * Item 685.40 covers tape recorders and dictation recording and transcribing machines * * *. Item 685.50 covers certain *combinations of some of the articles previously mentioned* * * *. [Emphasis added.]

Upon analysis of the foregoing comment, it is apparent that the phrase "combinations of some of the articles previously mentioned" refers to those combination articles embraced by the language in the superior heading "any combination thereof". The word "thereof"

[4] This study was submitted by the Tariff Commission to Congress prior to the effective date of the TSUS, and is regarded by the courts as an authoritative source for determining legislative intent. See: *Certified Blood Donor Services, Inc.* v. *United States*, 62 CCPA 66, C.A.D. 1147, 511 F.2d 572 (1975); *Kurt S. Adler, Inc.* v. *United States*, 61 CCPA 68, C.A.D. 1122, 496 F.2d 1220 (1974); *Albert E. Price, Inc.* v. *United States*, 60 CCPA 127, C.A.D. 1095, 476 F.2d 1354 (1973); *Wayne Withrow Conrac Division* v. *United States*, 60 CCPA 144, C.A.D. 1101, 477 F.2d 1393 (1973); *United States* v. *Cavalier Shipping Co., Inc.*, 60 CCPA 152, C.A.D. 1103, 478 F.2d 1256 (1973); *United States* v. *Precise Imports Corp.*, 59 CCPA 113, C.A.D. 1050, 458 F.2d 1376 (1972); *United States* v. *Pharmacia Fine Chemicals, Inc.*, 59 CCPA 196, C.A.D. 1066, 463 F.2d 1370 (1972); *United States* v. *Andrew Fisher Cycle Co.*, 57 CCPA 102, C.A.D. 986, 426 F.2d 1308 (1970); *Rifkin Textiles Corp* v. *United States*, 54 CCPA 138, C.A.D. 925 (1967), *cert. denied*, 389 U.S. 931 (1967).

obviously refers to the articles previously enumerated in the superior heading. Therefore, while clock-radios are within the scope of headnote 5 of schedule 7, part 2E, nevertheless the combination articles covered by item 685.50 are not those created by incorporating a clock or other timing apparatus in an article. Rather, the combination articles within the scope of item 685.50 are those created by a combination of some of the articles mentioned in the heading *antecedent* to the phrase "and any combination thereof, *whether or not* incorporating clocks or other timing apparatus". (Emphasis added.)

In summary, I am clear that solid-state (tubeless) radio receivers are properly dutiable under item 685.23, whether or not incorporating clocks or other timing apparatus; and hence the instant clock-radios were properly assessed by the regional commissioner.

This action is dismissed, and judgment will be entered accordingly.

(C.D. 4597)

TRANS-ATLANTIC COMPANY *v.* UNITED STATES

On Cross-Motions for Summary Judgment

Court No. 67/68744

Port of Philadelphia

[Judgment for plaintiff.]

(Decided May 22, 1975)

Allerton deC. Tompkins for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

FORD, Judge: This matter is before the court by virtue of a motion for summary judgment filed by plaintiff and a cross-motion for summary judgment by defendant made pursuant to rule 8.2. By these motions the parties have agreed that no genuine issue of material fact exists.

The merchandise involved consists of brackets for door closers which are admittedly the same in all material respects as those involved in *Trans Atlantic Company* v. *United States*,[1] 48 CCPA 30, C.A.D. 758 (1960), wherein said brackets were held to be parts of machines under paragraph 372, Tariff Act of 1930, rather than articles

[1] Motion to incorporate said record is granted.

manufactured of base metal as provided for in paragraph 397, Tariff Act of 1930. The brackets involved herein were classified under item 647.03, Tariff Schedules of the United States, as amended by Public Law 89–241, and assessed with duty at 19 per centum ad valorem. Plaintiff contends said merchandise is properly subject to classification under item 646.95, Tariff Schedules of the United States, and, therefore, dutiable at 11.5 per centum ad valorem. The pertinent statutory provisions and interpretative rules provide as follows:

646.95	Door closers and parts thereof, of base metal	11.5% ad val.

* * * * * * *

Hinges; and fittings and mountings not specially provided for, suitable for furniture, doors, windows, blinds, staircases, luggage, vehicle coach work, caskets, cabinets, and similar uses; all the foregoing, of base metal, whether or not coated or plated with precious metal: Not coated or plated with precious metal: Of iron or steel, of aluminum, or of zinc:

* * * * * * *

647.03	Other	19% ad val.

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * *

(c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:

(i) a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby;

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

* * * * * * *

(ii) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Plaintiff's motion for summary judgment was supported by the following affidavit of Norman A. Millman which facts are not disputed by defendant:

AFFIDAVIT

Norman A. Millman, being duly sworn, deposes and says;

1. In the year 1965, I was the Secretary-Treasurer of the Trans Atlantic Company and supervised all activities of that Company in connection with the importation and U.S. sale of door closers and parts thereof, including the soffit brackets and corner brackets imported under the below listed Philadelphia shipment covered by protest 67/68744–98481.

ENTRY	VESSEL	FROM	DESCRIPTION
24567 12/30/65	HAVSUL	GERMANY	SOFFIT BRACKETS
" "	"	"	CORNER BRACKETS

2. I am the same party who appeared as a witness and testified for the plaintiff in the matter of protest 329297K, *Trans Atlantic Company V. United States*, 48 CCPA (Customs) 30, CAD 758 (1960) wherein it was held that soffit brackets and corner brackets designed for the use with "TACO" door closers were held to be classifiable as parts of (machines) the door closers with which they were designed to be used.
3. The above identified brackets imported under entry 24567.
   a. Are metal brackets for mounting door closers.
   b. Support a mounting plate having bolt holes which are aligned with the holes in the mounting plate of "TACO" door closer.
   c. Are designed for use only for mounting "TACO" door closers on door frames, and unless such a bracket is used, the door closer (with which the brackets are designed for use) will not function efficiently when the door closer is mounted on the door frames.
   d. Are the same in all material respects as the soffit brackets and door closers that were the subject of decision in the above identified case *Trans Atlantic Co.* v. *United States*, CAD 758, and, if called upon to do so, I would give the same testimony about these brackets as I did in said litigation terminating in CAD 758.

If called upon to do so I would testify as to the correctness of the above facts.

Norman A. Millman

Based upon the affidavit and the answer to the complaint, plaintiff contends the involved brackets fall within the purview of item 646.95, *supra*, notwithstanding General Interpretative Rule 10(ij). The rule

does not prohibit said classification, plaintiff urges, because item 647.03, *supra*, contains a "not specially provided for" clause which, therefore, excludes said item from being considered a "specific provision."

Defendant, however, contends item 647.03, *supra*, is a specific provision within the intendment of rule 10(ij), *supra*, and permits the imported brackets, which are used to mount door closers to frames of doors, to remain in said provision in spite of the fact that by their use they may be physically considered to be parts of or adjuncts of door closers. When an article is specified by name or specific function, it is sufficiently specific to meet the test of General Interpretative Rule 10(ij). *J. E. Bernard & Co., Inc.* v. *United States*, 59 Cust. Ct. 31, C.D. 3060 (1967).

Based upon this interpretation, defendant contends the involved mountings are specified by name and since they are used on doors the specific function is also set forth.

Where one provision is limited by a "not specially provided for" clause, the other provision is usually favored particularly where it is more than a general descriptive provision. *United States* v. *Lansen-Naeve Corp.*, 44 CCPA 31, C.A.D. 632 (1957); *Ehrenreich Photo-Optical Industries, Inc.*, 74 Cust. Ct. 83, C.D. 4589 (1975).

In the instant case the imported articles consist of mountings suitable for use on doors and are also parts of door closers which are specifically provided for. The court can visualize mountings suitable for use with doors such as strike plates which are covered thereby. However, where a mounting is admittedly a part of a door closer, it is properly subject to classification as claimed. To hold otherwise would emasculate the provision for parts of door closers. The relative specificity of a provision is lessened by a "not specially provided for" clause when the other provision is equally applicable to the involved merchandise. *United States* v. *Alltransport, Inc.* 44 CCPA 149, C.A.D. 653 (1957). In any event, the court is of the opinion that the provision for parts of door closers more specifically describes the imported articles than the provision for mountings, not specially provided for, suitable for doors, and prevails under General Interpretative Rule 10(c).

Plaintiff having abandoned entry 19280, it is hereby dismissed.

Plaintiff's motion for summary judgment is, accordingly, granted and defendant's cross-motion for summary judgment is denied. Judgment will be entered accordingly.

(C.D. 4598)

PRODUCTOL CHEMICAL CO. *v.* UNITED STATES

Coal tar distillates—Cresylic acid

A chemical product consisting of between 88% to 90% of so-called 2,4 xylenol held properly classified under item 403.46 of the tariff schedules as a coal tar distillate rather than under item 403.42 as cresylic acid.

Court Nos. 70/63006, etc.

Port of Los Angeles

[Judgment for defendant.]

(Decided May 28, 1975)

Stein and Shostak (*S. Richard Shostak* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

MALETZ, Judge: The question involved in these 14 consolidated actions is the dutiable tariff status of certain merchandise invoiced as "Cresylic Compounds Grade 2490," which was manufactured in West Germany, shipped from the Netherlands and entered at the port of Los Angeles at various times between January 1968 and February 1970.

The merchandise was classified and assessed for duty under item 403.46, Tariff Schedules of the United States (TSUS), as other coal tar distillates which on being subjected to distillation yield in the portion distilling below 215° C. a quantity of tar acids equal to or more than 75% by weight of the original distillate.

Plaintiff does not dispute that the merchandise is a coal tar distillate within the meaning of the tariff schedules, but contends that the importations are dutiable under a more specific provision, item 403.42, TSUS, as cresylic acid which on being subjected to distillation yields in the portion distilling below 215° C. a quantity of tar acids equal to or more than 75% by weight of the original distillate.

Defendant contends, alternatively, in its amended answer that if the court should find that the imported merchandise is not a distillate of coal tar it is properly dutiable under the basket provision of item 403.60, TSUS, as other cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of part 1 of schedule 4.

The pertinent provisions of the tariff schedules are as follows:

SCHEDULE 4. – CHEMICALS AND RELATED PRODUCTS

* * * * * * *

Schedule 4 headnotes:

* * * * * * *

2. (a) The term "compounds", as used in this schedule, means substances occurring naturally or produced artificially by the reaction of two or more ingredients, each compound—

(i) consisting of two or more elements,

(ii) having its own characteristic properties different from those of its elements and from those of other compounds, and

(iii) always consisting of the same elements united in the same proportions by weight with the same internal arrangement.

The presence of impurities which occur naturally or as an incident to production does not in itself affect the classification of a product as a compound.

(b) The term "compounds", as used in this schedule, includes a solution of a single compound in water, and, in determining the amount of duty on any such compound subject to duty in this schedule at a specific rate, an allowance in weight or volume, as the case may be, shall be made for the water in excess of any water of crystallization which may have been in the compound.

3. (a) The term "mixtures", as used in this schedule, means substances consisting of two or more ingredients (i.e., elements or compounds), whether occurring as such in nature, or whether artificially produced (i.e., brought about by mechanical, physical, or chemical means), which do not bear a fixed ratio to one another and which, however thoroughly commingled, retain their individual chemical properties and are not chemically united. The fact that the ingredients of a product are incapable of separation or have been commingled in definite proportions does not in itself affect the classification of such product as a mixture.

(b) The term "mixtures", as used in this schedule, includes solutions, except solutions defined as compounds in headnote 2(b) of this schedule.

PART 1. – BENZENOID CHEMICALS AND PRODUCTS

* * * * * * *

Subpart A. – Organic Chemical Crudes

Coal tar, crude (including crude blast-furnance tar, crude oil-gas tar, and crude water-gas tar), and organic chemical products found naturally in coal tar, whether produced or obtained from coal tar or other source:

* * * * * * *

401.24 Cresylic acid which on being subjected to distillation yields in the portion distilling below 190°C. a quantity of tar acids less than 5% by weight of the original distillate, and which on being subjected to distillation yields in the portion distilling below 215°C. a quantity of tar acids less than 75% by weight of the original distillate..... Free

* * * * * * *

401.76 Xylenols which on being subjected to distillation yield in the portion distilling below 190°C. a quantity of tar acids less than 5% by weight of the original distillate, and which on being subjected to distillation yield in the portion distilling below 215°C. a quantity of tar acids less than 75% by weight of the original distillate..... Free

* * * * * * *

Subpart B. – Industrial Organic Chemicals

Subpart B headnote:

1. The provisions of items 403.02 to 403.60, inclusive, in this subpart shall apply not only to the products described therein when obtained, derived, or manufactured in whole or in part from products described in subpart A of this part, but shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artificially produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in said subpart A.

	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of this part:	
	• • • • • • •	
	All distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below 190°C. a quantity of tar acids equal to or more than 5% by weight of the original distillate or which on being subjected to distillation yield in the portion distilling below 215°C. a quantity of tar acids equal to or more than 75% by weight of the original distillate:	
403.40	Phenol (carbolic acid) which on being subjected to distillation yields in the portion distilling below 190°C. a quantity of tar acids equal to or more than 5% by weight of the original distillate	[Dutiable]
[Claimed] 403.42	Cresylic acid which on being subjected to distillation yields in the portion distilling below 215°C. a quantity of tar acids equal to or more than 75% by weight of the original distillate	[Dutiable] [1]
403.44	Metacresol, orthocresol, paracresol, and metaparacresol, all the foregoing having a purity of 75% or more by weight	[Dutiable]
[Classified] 403.46	Other	[Dutiable] [2]
• • • • • • •		
[Defendant's alternative claim] 403.60	Other	[Dutiable] [3]

[1] The claimed duty rate under item 403.42 ranges, depending upon the entry date, from 1.55¢ per lb. + 9% ad val. to 1.2¢ per lb. + 7% ad val.

[2] The assessed duty rate under item 403.46 ranges, depending upon the date of entry, from 2¢ per lb. + 10% ad val. to 2.4¢ per lb. + 14% ad val.

[3] Defendant's alternate claimed duty rate under item 403.60 ranges, depending upon the entry date, from 2¢ per lb. + 22.5% ad val. to 2¢ per lb. + 17.5% ad val. Since the rate of duty under defendant's alternate claim is higher than that assessed in liquidation under item 403.46, defendant does not request reliquidation under item 403.60.

The parties agree that the merchandise involved in the consolidated actions consisted of (i) between 88% and 90% of 2,4 xylenol (also known as 2,4 dimethyl phenol); (ii) approximately 6.1% of 2,5 xylenol (also known as 2,5 dimethyl phenol); (iii) approximately 2.2% of paracresol; and (iv) approximately 3.6% of remaining contents. Further, it is not disputed that all the importations, on being subjected to distillation, yield in the portion distilling below 215°C. a quantity of tar acids equal to or more than 75% by weight of the original distillate.

Plaintiff's position is that the designation in item 403.42 for cresylic acid is an *eo nomine* one which includes all forms of the article; that the term "cresylic acid" embraces a broad range of related chemical products in varying combinations and concentrations; and that it encompasses a product such as the merchandise in question even though it contains a very high concentration of a single isomer, in this case 2,4 xylenol.

Defendant contends, on the other hand, that the term cresylic acid is more limited in scope and that it does not include a product containing such high percentages of a single chemical compound as the present importations. It further argues that the imported merchandise is essentially a pure compound known and recognized as 2,4 xylenol, not as cresylic acid, and that the arrangement of the tariff schedules in subparts A and B of part 1 of schedule 4 clearly shows a Congressional intent to distinguish between "cresylic acid" and "xylenol" as products of trade and commerce.

Thus the primary question presented to the court is whether the merchandise in question comes within the common understanding of the term cresylic acid. Unless a differing commercial designation is claimed, the common meaning of the term, which presumptively is the same as its commercial meaning, will control. *Marshall Field & Co.* v. *United States*, 45 CCPA 72, C.A.D. 676 (1958).

Since the common meaning of a tariff term is a question of law, the court may, in addition to receiving testimony of witnesses, which is advisory only, consult extrinsic sources such as dictionaries, textbooks, scientific treatises and government publications as an aid in determining that meaning. *United States* v. *Victoria Gin Co., Inc., et al.*, 48 CCPA 33, C.A.D. 759 (1960); *Sandoz Chemical Works, Inc.* v. *United States*, 43 CCPA 152, C.A.D. 623 (1956); *B. Axelrod & Co.* v. *United States*, 70 Cust. Ct. 117, C.D. 4417 (1973).

As a point of reference, the court is guided at the outset by the statements in the *Tariff Classification Study – Explanatory and Background Materials*, Schedule 4 (Nov. 15, 1960) (hereinafter *Study*) that wherever possible, the products named in schedule 4

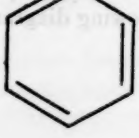
are described in "technical, chemical terminology";[4] that since the advent of like materials derived from petroleum, the existing tariff terminology for coal tar products is "obsolete"; and that a "new terminology based on chemical construction and present trade practice" has been adopted.[5]

In order to understand the "new terminology" adopted in part 1 of schedule 4 it is helpful to consider the chemical nature of coal tar and the products obtained therefrom by distillation insofar as they are relevant to the importations in question.

Coal tar is a viscous oily liquid obtained as a coke-oven by-product in the distillation of bituminous coal. It is a raw material which serves as a source of many organic chemical compounds which are obtained from fractional distillates of the coal tar.[6]

A typical primary distillation of coal tar will yield approximately the following fractions at the following boiling ranges: In the boiling range up to 200° C., light oil; in the boiling range, 200°–250° C., middle oil which is also known as creosote or tar acid oil; in the boiling range 250°–300° C., heavy oil; in the boiling range 300°–350° C., anthracene oil. The residue from the distillation is coal tar pitch.

The middle oil or tar acid oil fraction contains napthalene and the tar acids. The tar acids, which comprise the phenols or phenolic compounds present in coal tar, consist almost entirely of a mixture of: Phenol; cresols (also known as methyl phenols); xylenols (also known as dimethyl phenols); and other high-boiling tar acids consisting of ethyl phenols and trimethyl phenols. Phenolic compounds are 6-membered hydrocarbon rings which have a hydroxyl (OH) group attached to a ring carbon atom in place of the hydrogen atom. Thus, "phenol" or carbolic acid (C_6H_5OH) the simplest of the phenols, has a hydroxyl or OH group in the first position of the 6-membered hydrocarbon ring as depicted in the following diagram:



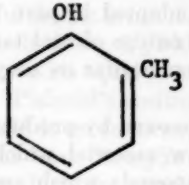
[4] *Study*, p. 2.

[5] *Ibid.*, p. 17.

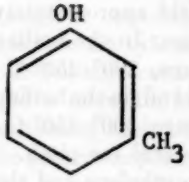
[6] The information contained in this and the succeeding two paragraphs is obtained from the following authorities, in addition to the record: II *Chemistry of Coal Utilization* (1945); Faith, Keyes and Clark, *Industrial Chemicals* (2d ed. 1957); Snell and Snell, *Chemicals of Commerce* (2d ed. 1952); 4 Kirk and Othmer, *Encyclopedia of Chemical Technology* (1949); 1 *Summaries of Tariff Information* pt. 2 (1948).

It is to be added that distillation is a "process of evaporation and re-condensation used for separating liquids into various fractions according to their boiling points or boiling ranges." *Chambers' Technical Dictionary* 254 (rev. ed. 1949). Fractional distillation is the process of "collecting separately the distillates evaporating at certain temperatures." *Hackh's Chemical Dictionary* 279 (4th ed. 1969).

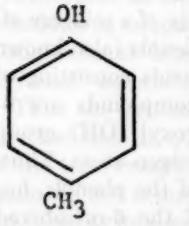
Cresols or methyl phenols ($CH_3C_6H_4OH$) have a methyl (CH_3) group attached to the ring compound in place of a hydrogen atom and may be processed to yield three isomers,[7] orthocresol, metacresol and paracresol. The following is a diagram of these isomers:



orthocresol (ortho methyl phenol)



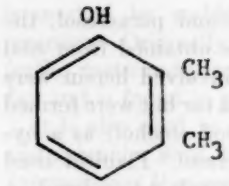
metacresol (meta methyl phenol)



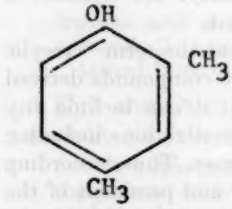
paracresol (para methyl phenol)

Xylenols—which as previously noted are also known as dimethyl phenols ($(CH_3)_2C_6H_3OH$)—have two methyl groups substituting for two hydrogen atoms and may be processed to yield six xylenol isomers as shown in the following diagram:

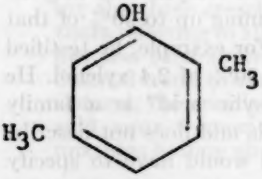
[7] An isomer is a compound composed of the same elements, the same chemical formula, and the same molecular weight as another compound or compounds, with the difference in the compounds being solely in the arrangement of the atoms in the molecule. Because of this difference in structural arrangement, the compounds will differ in one or more properties.



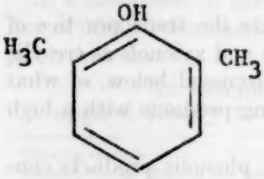
2,3 xylenol (2,3 dimethyl phenol)



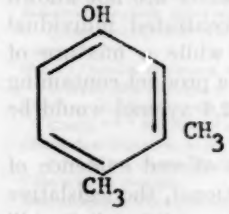
2,4 xylenol (2,4 dimethyl phenol)



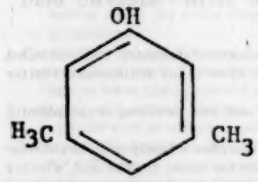
2,5 xylenol (2,5 dimethyl phenol)



2,6 xylenol (2,6 dimethyl phenol)



3,4 xylenol (3,4 dimethyl phenol)



3,5 xylenol (3,5 dimethyl phenol)

While, as indicated, 2,4 xylenol, 2,5 xylenol and paracresol, the constituents of the merchandise at bar, may be obtained from coal tar, the record establishes that the shipments involved herein were not obtained as a product of the distillation of coal tar but were formed from the synthesis of phenol and methanol (wood alcohol) as a by-product of an operation to manufacture orthocresol.[8] Plaintiff used the merchandise to manufacture 6 tertiary butyl 2,4 xylenol, a substance which is used in a gasoline anti-oxidant.

Against this background, plaintiff contends that the term "cresylic acid" applies to a mixture of phenols or phenolic compounds derived from coal tar or petroleum distillates, and that it can include any combination of such compounds in varying concentrations including up to 90%, or even higher, of an individual isomer. Thus, according to Mr. Ernest E. Chipman, a chemical engineer and president of the plaintiff-importing company, a special grade of cresylic acid may be present as a single isomer in a product containing up to 90% of that isomer and still be considered cresylic acid. For example, he testified that cresylic acid could contain from 0% to 90% of 2,4 xylenol. He agreed, however, that since the term "cresylic acid" is a family name that covers a broad range of compounds and does not describe a specific product, an order for cresylic acid would have to specify the grade designation.[9]

Plaintiff also claims that its position reflects the trade practice of describing any combination of phenols, cresols and xylenols as cresylic acid or cresylics, and has offered evidence, discussed below, of what it considers to be the trade practice of treating products with a high xylenol content as cresylic acid.

Defendant, on the other hand, argues that phenolic products containing a high concentration of an individual isomer are not known as cresylic acid but by the name of the concentrated individual isomer. In other words, in defendant's view, while a mixture of cresols or xylenols might be termed cresylic acid, a product containing a high concentration of a single isomer such as 2,4 xylenol would be known and sold as 2,4 xylenol.

It is apparent from the record (both parties offered evidence of trade practice in support of their respective positions), the legislative history and the technical literature that the term "cresylic acid"

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[8] In this connection, Dr. Philip L. Stotter, a chemist and assistant professor of chemistry, who was called as a government witness, testified without contradiction that he did not know of any distillation of coal tar which would give a 2,4 xylenol of 90% purity. (R. 526, 531–32.)

[9] Plaintiff's witness, Mr. Donald C. Phinney, a chemical engineer and vice president of the plaintiff company, testified (R. 188–89):

From the point of view, in my mind, cresylic acid is the name that describes a family or a class of compounds and therefore, any of the compounds that are in that class retain the name, cresylic acid, whether they are ten per cent or one hundred per cent. Just like fruit. An orange is fruit whether you call it an orange or fruit. Xylenol is cresylic acid whether you call it either.

is marked by ambiguity and has acquired at least two different meanings. Originally, cresylic acid referred to a mixture of cresols (ortho, meta and para cresol), a meaning which persists to the present day and is found in various texts.[10]

It is also used to describe a mixture of phenols, including cresols and xylenols. Thus, both definitions are found in *Webster's Third New International Dictionary* (1963), as follows:

> cresylic acid *n* 1: CRESOL: *esp:* a crude mixture of the three cresols 2: a mixture of phenols (as cresols and xylenols) obtained from coal tar or cracked petroleum oils.[11]

4 Kirk and Othmer, *Encyclopedia of Chemical Technology* (1949) contains the following comment (p. 601):

> * * * Another ambiguity in cresol terminology is the use of the name "cresylic acid" for cresols. At times the term cresylic acid has designated a wide-boiling mixture of phenolics containing the three cresols, occasionally including phenol but at other times referring to all phenolics except phenol itself. The same name has also been applied specifically to cresols. With the current industrial trend toward separation and utilization of the individual isomers, the cresols are generally designated as such and cresylic acid more frequently refers, in a collective sense, to phenolic mixtures boiling above the cresol range.

In a discussion of the provisions for coal tar products in the Tariff Act of 1930, 1 *Summaries of Tariff Information* pt. 2 (1948) states at p. 71 that—

> * * * In commercial terminology the term cresols is also applied loosely to mixtures of the three isomers, which also

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[10] See, for example:

Bennett, *Concise Chemical and Technical Dictionary* 293 (3d ed. 1974):
cresylic acid. Mixture of *o*-, *m*-, and *p*-cresols (cresyl, paracresylol); * * *.

Industrial Chemicals, *supra* note 6, at p. 297:
Cresol (cresylic acid) is an isomeric mixture (*o*-, *m*-, and *p*-cresol) obtained by refining the so-called tar acids. * * *

Hackh's Chemical Dictionary, *supra* note 6, at p. 183:
Cresylic acid. Mixed *o*-, *m*-, and *p*-cresols.

3 *McGraw Hill Encyclopedia of Science and Technology* 542 (1960):
Cresol. * * * Mixtures of the cresols (cresylic acid) are used in the manufacture of resins, plastics * * *.

Chemicals of Commerce, *supra* note 6, at p. 240:
* * * Mixed cresols, obtained in dark impure form from coal tar, are known as cresylic acid. * * *

[11] See also, for example:

Rose and Rose, *The Condensed Chemical Dictionary* 319 (5th ed. 1956):
cresylic acid. (See also cresol.) The trade designation for commercial mixtures of phenolic materials boiling above the cresol range. Cresylic acid consists of phenols, cresols, and xylenols in various proportions.

Concise Chemical and Technical Dictionary, *supra* note 10, at pp. 293-94:
cresylic acid, crude. Crude mixture of monohydric phenols, essentially cresols and their higher homologs, of lower phenol content than crude carbolic acid.
cresylic acid, refined. Refined mixture of monohydric phenols, consisting essentially of cresols and/or xylenols with or without a percentage of phenol.

7 *Encyclopedia Americana* 159 (1953):
* * * The crude tar acids are referred to as cresylic acids; they are used in disinfectants, resins, metal cleaning compounds, or flotation agents, and oxidation inhibitors. The crude cresylic acids can be fractionated (usually under vacuum) into the individual tar acids, phenol, cresols, and xylenols. * * *

include a small proportion of phenol and high-boiling tar acids, and the term cresylic acid is applied to a mixture of cresols containing a large proportion of high-boiling tar acids. * * *

The lack of a precise meaning for cresylic acid was noted (and criticized) over 35 years ago by the Tariff Commission in its report, *Synthetic Resins and their Raw Materials*, Report No. 131 (2d ser. 1938). The Commission stated (p. 119):

> *Cresylic acid.*—Cresylic acid is a generic term now applied to mixtures of tar acids in widely varying proportions. As defined in the literature and as formerly used in commerce the term identified a mixture of ortho, meta, and para cresols in the proportions in which they occur in coal tar. This proportion is approximately 40 percent metacresol, 35 percent orthocresol, and 25 percent paracresol. But in recent years the designation cresylic acid has been applied to all sorts of mixtures of tar acids boiling above 190°C. Practically every maker of synthetic resins, antiseptics, and disinfectants has his own specifications for cresylic acid; it may be any mixture in almost any proportions of the three cresols, the six isomeric xylenols, and the higher boiling tar acids. Imports of crude cresylic acid are understood to be largely xylenol mixtures containing low percentages of the cresols. This loose application of cresylic acid in recent years is due to the increased commercial application of the high-boiling tar acids, especially the xylenols.
>
> * * * The provision in paragraph 27 reads, "cresylic acid which on being subjected to distillation yields in the portion distilling below two hundred and fifteen degrees centigrade, a quantity of tar acids equal to or more than 75 per centum of the original distillate." Under this provision cresylic acid may include an endless number of combinations of tar acids and may or may not contain any of the isomeric cresols. Of the 17 or more tar acids known to exist in coal tar (see table 56), only 8 have boiling points above 215°C. It would seem to be more accurate and more in line with present day usage to have the tariff drop the designation cresylic acid in favor of more definite terms based on composition, such as cresols and cresol mixes, xylenol and xylenol mixes, etc.

It is evident from the foregoing statements that, despite the vagaries of its application, the term cresylic acid has always been used to denote a mixture of phenolic compounds, whether it be a mixture of cresols or of the various high-boiling tar acids. However, the term is not used to describe products consisting *predominantly* of a highly concentrated phenolic isomer, such as orthocresol or 2,4 xylenol. To the contrary, the record establishes that such products are described and offered for sale under the name of that isomer and not as cresylic acid.

Thus, examination of various catalogues and brochures issued by domestic manufacturers of coal tar products (most of which were placed in evidence by plaintiff) reveals that, of the various tar acid products listed, those which are designated and offered for sale as "cresylic acid" are unvaryingly mixtures of two or more isomers,

none of which individually comprises more thar 60% of the total mixture. On the other hand, all the listed products which are shown to contain a higher concentration of an individual isomer are, without exception, denominated and offered for sale under the name of that isomer and not as cresylic acid.[12]

One example is an undated publication issued some time after 1949 (see plaintiff's exhibit 3, defendant's exhibit B, and court exhibit 1) listing the products offered by the Merichem Division of Jefferson Lake Sulphur Company, the largest producer of cresylic acids in the United States. This publication states on its cover page that cresylic acid is the "common name for phenol, cresols, and xylenols." However, in the operative parts of the publication, Merichem offers its phenolic compounds under the following designations: Products containing from 52% to 91% phenol are offered under the designation "phenol"; products containing from 51% to 98% orthocresol are offered under the designation "Ortho cresol," and not cresylic acid, while products containing from 68% to 80% "meta-para cresols" are offered under the designation "meta-para cresols." Also offered in this publication is "cresylic acid" of different types, all of which contain various mixtures of xylenols, phenols and cresols. Yet only one of these products (cresylic acid No. 86) contains even as much as 51% of a single isomer, orthocresol, while two other cresylic acids (Nos. 41 and 45) contain only 45% and 42% metacresol, respectively.

Another example is a 1971 chemicals price list (plaintiff's exhibit 10) issued by Continental Oil Company, owner of Pitt-Consol Chemical Company. This price list offers under the heading "Cresylics . . . From Pitt-Consol * * * Cresols and Cresylic Acids" products designated as "ORTHO-CRESOL," "METAPARA CRESOL," "XYLENOLS" and "CRESYLIC ACIDS." The constituents of the cresylic acids are not given, but the two "xylenols" listed (2,6 xylenol and 2,4/2,5 xylenol) are stated to have a "typical purity" of 90.0% and 85.0% respectively.

It is to be observed that an earlier catalogue of Pitt-Consol entitled "High Purity Cresylics" (plaintiff's exhibit 9) which was issued some time after 1949 also lists various grades of that company's products, which are designated as "phenol," "ortho cresol," "meta para cresol," "cresol" and "cresylic acid." The specifications for the cresylic acids thus listed show varying specified combinations of cresols, xylenols and phenols. Significantly, only one of these, "cresylic acid No. 7," contains as much as 45% of an individual isomer, i.e., metacresol.

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[12] The terms "cresylic acid," "cresylics," and "tar acids" are also employed in a very broad general sense as a heading or lead caption on company brochures and price lists and in news articles to refer generally to phenolic compounds. However, in no wise are these terms identified with the specific products offered or referred to in such publications.

As a further example, in 1962 the Koppers Company offered three grades of "xylenols" (defendant's exhibit C). More specifically, it offered merchandise containing 95% of 2,4 and 2,5 xylenol as "Xylenol 495," merchandise containing 70% of 3,5 xylenol as "Xylenol 570," and merchandise containing 95% of 3,5 xylenol as "Xylenol 595."

In addition, the January 15, 1968 and May 6, 1968 editions of the *Oil, Paint and Drug Reporter* [13] (defendant's exhibit K), an authoritative trade periodical which lists the prices for various chemical products in the United States market, showed that the following products were offered:

m-Cresol, 95–98%;
m-p-Cresol, 95% and 97%;
o-Cresol, four grades, depending on melting point;
p-Cresol, 98%;
Cresylic acid, metapara content above 25%;
Cresylic acid, metapara content 25% or less;
Cresylic acid, importer, ADF [American Duty Free];
Xylenol, three grades, depending on melting point;
Xylenol fraction, dry above 227 degrees C.; and
Xylenol fraction, dry at or below 227 degrees C.

It also bears mention that the *Custom House Guide* (1959) in its alphabetical import commodity index lists "cresylic acid" and "xylenol" as separate dutiable commodities. Thus "cresylic acid" with 75% or more tar acids is listed at page 716 under the U.S. Department of Commerce commodity code number 8020.100, while "xylenol" is listed at page 968 under another commodity code number, 8040.985.[14]

Beyond these considerations, it is not without significance that defendant's witness Mr. Benjamin W. Jones, former vice president of sales at Pitt-Consol Chemical Company and, prior to that, chief chemist for Pittsburgh Coal Carbonization Company, testified that Pitt-Consol sold phenol of 82% and 90% purity as "82% phenol" and "90% phenol," and that it was a general practice in the trade to describe products which were 80% to 90% in purity of a particular phenolic isomer by the name of that isomer and not as cresylic acid. (R. 351–52.) To similar effect, plaintiff's witness, Mr. Phinney, testified that "most often" if 2,4 xylenol had the characteristics in which a customer was interested, a product containing "88.1% of

[13] This publication is now known as the *Chemical Marketing Reporter.*

[14] It is to be noted that plaintiff's witness, Mr. Phinney, testified that plaintiff has produced 3,5 xylenol of a purity as high as the merchandise at bar. However, while the three documents (defendant's collective exhibit F) offered as evidence of a sale of such merchandise to the Ottawa Chemical Company in 1967 include the public weighmaster's certificate which lists the commodity as "cresylic acid," the transmittal noteaccompanying the certificate prepared by plaintiff's own plant personnel, notes the subject as: "Ottawa Chem - 3,5 xyl - 12/8/67." Further, while the bill of lading describes the article as "Cresylic acid (3/5 xyenol [sic])," under the heading "Billing Information," the "Product" is stated to be "3,5 xylenol." In short, evenplaintiff refers to a commodity having a 3,5 xylenol content of 88% or higher as "3,5 xylenol."

2,4 xylenol" would "probably" be sold by the plaintiff as "2,4 xylenol." (R. 234.)

I am persuaded from the foregoing that a clear distinction is drawn in the trade between "cresylic acid" and "xylenol" as articles of commerce; that a product containing a concentration of 88% or more of 2,4 xylenol is known and offered as "2,4 xylenol," not as "cresylic acid"; and that this distinction is reflected in the tariff schedules in both subparts A and B of part 1 of schedule 4.

Thus, subpart A, which covers "Organic Chemical Crudes" and specifically names "all known coal-tar crudes and distillates containing 6-membered rings * * *," [15] provides *separately*, in items 401.24 and 401.76, for cresylic acid and xylenols which on being subjected to distillation yield in the portion distilling below 190°C. a quantity of tar acids less than 5% by weight of the original distillate, and which yield in the portion distilling below 215°C. a quantity of tar acids less than 75% by weight of the original distillate.

In subpart A, Congress obviously ascribed different meanings to the terms "cresylic acid" and "xylenols." It is equally patent that when used in another related provision of the same schedule and part neither term undergoes a change in meaning. In other words, where the same word or phrase is used in different parts of the same statute, it will be presumed, in the absence of any clear indication of a contrary intent, to be used in the same sense throughout the statute. *Schooler* v. *United States*, 231 F.2d 560 (8th Cir. 1956); *Acme Venetian Blind & Window Shade Corp.* v. *United States*, 56 Cust. Ct. 563, C.D. 2704 (1966).

Therefore, the distinction made between cresylic acid and xylenol in the crude state in subpart A (by virtue of their separate provisions) carries over to those same articles when provided for as intermediates in subpart B. This holds true even though xylenol is not *eo nomine* provided for.

Furthermore, plaintiff's claim that cresylic acid embraces highly concentrated phenolic isomers is vitiated by the classification system in subpart B, which provides separately for the high-boiling tar acids: phenol (item 403.40) and the cresols (item 403.44).

Accordingly, I find that the importations in issue, containing concentrations of 2,4 xylenol ranging from 88% to 90% are xylenol and not cresylic acid, as claimed. In the absence of an *eo nomine* provision for xylenols, their classification under item 403.46 as "Other" coal tar distillates must be sustained unless precluded therefrom because they are not distillates of coal tar.

On this latter aspect, it is uncontroverted that a product containing 2,4 xylenol of 88% to 90% purity cannot be isolated from coal tar by

[15] Study, p. 19.

distillation alone; and that the merchandise in question was in fact obtained by synthesis from the reaction of phenol and methanol. Defendant raises the question whether the subheading governing items 403.40 (phenol), 403.42 (cresylic acid), 403.44 (metacresol, orthocresol, paracresol and metaparacresol having a purity of 75% or more by weight) and 403.46 (other) [16] limits the scope of these provisions to naturally occurring distillates of coal, blast-furnace, oil-gas and water-gas tars, or to synthetic materials of chemical composition "exactly like" such distillates thereby excluding the shipments in issue.

Examination of subpart B and the governing headnote and subheading compels rejection of such a narrow view. The record establishes that metacresol of 75% purity cannot be obtained from coal tar by distillation alone but requires synthetic steps in its preparation. Thus, adoption of the construction tentatively raised by defendant would make a nullity of the provisions in item 403.44 for metacresol and paracresol.[17] In this circumstance, it must be presumed that Congress intended to include under the subheading in question high purity tar acid and compounds obtainable by synthesis and not solely by distillation.

I am also cognizant of the fact that headnote 1 of subpart B [18] was intended to describe the coverage of items 403.02 through 403.50 based [19]—

> * * * on the "benzenoid" concept and prevailing practice. Within this framework, it continues the existing relationships

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[16] The subheading covers—

> All distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below 190°C. a quantity of tar acids equal to or more than 5% by weight of the original distillate or which on being subjected to distillation yield in the portion distilling below 215°C. a quantity of tar acids equal to or more than 75% by weight of the original distillate.

[17] The boiling points of metacresol and paracresol are so close together (202.8°C. and 201.8°C., respectively) it appears that paracresol of 75% purity could not be obtained by distillation either. See 4 *Encyclopedia of Chemical Technology*, *supra* note 6, which states, p. 602:

> * * * Of the three cresols the ortho isomer is the only one directly recoverable from the still as a pure compound. The boiling points of *m*-cresol and *p*-cresol are too nearly alike to permit separation of these isomers by fractional distillation. Consequently, these two compounds are either used as mixtures or subjected to further treatment.

See also 11 *Chemistry of Coal Utilization*, *supra* note 6, which states, pp. 1345–46:

> *o*-Cresol, as previously noted, is prepared by fractional distillation of crude tar acids to obtain a concentrate which is then refractionated to yield a product of the desired purity. Because of this comparative ease of preparation, *o*-cresol was obtained from crude tar acids considerably sooner than the *m*- and *p*-cresols, which distill within a boiling range of about 1½°. This necessitated the discovery of some other means of separation than distillation. Subsequent research has evolved a number of chemical separation schemes for *m*- and *p*-cresol, but even at the present time these two compounds are still marketed almost entirely as a mixture.

And see *Industrial Chemicals*, *supra* note 6, at p. 298.

[18] Headnote 1 provides that—

> 1. The provisions of items 403.02 to 403.60, inclusive, in this subpart shall apply not only to the products described therein when obtained, derived, or manufactured in whole or in part from products described in subpart A of this part, but shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artificially produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in said subpart A.

[19] *Study*, p. 20.

with the crudes in subpart A, and extends the concept now extant in paragraph 27(a)(1) of providing for "benzenoid" products *from whatever source obtained.* * * *
[Emphasis added.]

For the foregoing reasons, it is concluded that the importations in issue were correctly classified by the government under item 403.46. Plaintiff's claim must therefore be overruled and judgment will be entered accordingly.

(C.D. 4599)

AMERICAN RUSCH CORP. *v.* UNITED STATES

Medical instruments and apparatus—Respiratory equipment

PROTESTANT'S BURDEN OF PROOF

In classification cases the protestant has the burden of establishing not only that the Government's classification was incorrect, but also of establishing the correctness of the classification asserted. Moreover, unless the plaintiff has established the propriety of its asserted classification, the protest must be overruled, and it is unnecessary to consider whether or not the Government's classification is wrong. *United States* v. *National Starch Products, Inc.*, 50 CCPA 1, C.A.D. 809, 318 F. 2d 737 (1962), *cert. denied*, 373 U.S. 923 (1963); *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970). Hence, where plaintiff failed to establish the propriety of its claim under item 709.45, TSUS, the court overruled the protests without reaching the issue of whether the merchandise was properly classified by the regional commissioner under item 709.09, TSUS.

STATUTORY CONSTRUCTION—LITERAL MEANING VS. CONTRARY LEGISLATIVE INTENT

Tariff provisions do not necessarily include everything that falls within their literal meaning, particularly where, demonstrably, there is contrary legislative intent. *General Methods Corporation* v. *United States*, 59 CCPA 109, C.A.D. 1049, 458 F. 2d 521 (1972); *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F. 2d 1308 (1970). And "[i]t is a familiar rule, that a thing may be within the letter of the statute and yet not within * * * its spirit, nor within the intention of its makers". *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459 (1892); *Barnebey-Cheney* v. *United States*, 61 CCPA 10, 14, C.A.D. 1110, 487 F. 2d 553, 556 (1973); *United States* v. *Hammond Lead Products, Inc.*, 58 CCPA 129, 139, C.A.D. 1017, 440 F. 2d 1024, 1031 (1971).

STATUTORY CONSTRUCTION—*EO NOMINE* PROVISION

An *eo nomine* provision does not include all forms of the article where there exists a contrary legislative intent.

STATUTORY CONSTRUCTION—COMMON MEANING YIELDS TO CONTRARY LEGISLATIVE INTENT

The common meaning of tariff terms, as expressed in lexicographical authorities, must yield to contrary legislative intent. *Heads and Threads* v. *United States*, 56 CCPA 95, 98, C.A.D. 960, 417 F. 2d 637, 639 (1969).

STATUTORY CONSTRUCTION—RESORT TO LEGISLATIVE HISTORY NOT PROSCRIBED BY APPARENTLY CLEAR STATUTE

There is no rule forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination.' " *Harrison* v. *Northern Trust Co.*, 317 U.S. 476, 479 (1943).

STATUTORY CONSTRUCTION—MASTER RULE

The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent. *United States, etc.* v. *Simon Saw & Steel Co.*, 51 CCPA 33, 40, C.A.D. 834 (1964).

RESPIRATORY EQUIPMENT (ITEM 709.45)—LEGISLATIVE HISTORY

Although the tracheotomy and nasopharyngeal tubes and other devices herein are literally "breathing appliances", nevertheless they are not within the intended scope of item 709.45. The *Tariff Classification Study* clearly indicates that the framers of the provision intended that it cover "articles * * * currently dutiable under paragraph 353 or 372 * * * depending on the essentiality of any electrical feature which may be incorporated in the apparatus or appliance". The imports were not articles encompassed by paragraph 353 or paragraph 372.

ITEM 709.45—GAS MASKS AND SIMILAR RESPIRATORS

The language in item 709.45 "including gas masks and similar respirators" was intended to extend the scope of the provision. *Cf. United States* v. *Ampex Corp. et al.*, 59 CCPA 134, C.A.D. 1054, 460 F. 2d 1086 (1972).

Court Nos. 68/34080, etc.

Port of New York

[Judgment for defendant.]

(Decided May 28, 1975)

Lane, Young & Fox (*Peter Jay Baskin* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Gilbert Lee Sandler* and *David R. Ostheimer*, trial attorneys), for the defendant.

NEWMAN, Judge: This action comprises six consolidated protests which raise the issue of the proper tariff classification of merchandise

described on the entries and related papers as tracheotomy tubes, tracheotomy cuffs, Tracheoflex, nasopharyngeal tubes, and articles of similar descriptions. These articles were exported from West Germany during the years 1967 through 1969, and entered at the port of New York.

The regional commissioner classified the merchandise as "catheters" under item 709.09 of the Tariff Schedules of the United States (or under item 709.09, as modified by T.D. 68–9) and assessed duty at the rate of 12.5, 11, or 10 per centum ad valorem, depending upon the date of entry.

Defendant asserts as an affirmative defense that in the event the court determines that the imports were improperly classified as catheters under item 709.09, they are properly dutiable under item 709.27 (or under item 709.27, as modified by T.D. 68–9) at the rate of 36, 32, or 28.5 per centum ad valorem, depending upon the date of entry.[1]

Plaintiff claims that the imports are properly dutiable under the provision for various types of respiratory equipment in item 709.45 (or under item 709.45, as modified by T.D. 68–9) at the rate of 10, 9, or 8 per centum ad valorem, depending upon the date of entry.

The protests are overruled.

STATUTE INVOLVED [2]

Schedule 7, Part 2, Subpart B, TSUS:

	Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and ophthalmic instruments), and parts thereof:	
	* * * * * * *	
	Other:	
	* * * * * * *	
709.09	Bougies, catheters, drains, and sondes, and parts thereof----	* * *
	* * * * * * *	
	Other:	
	* * * * * * *	
709.27	Other----------	* * *
	* * * * * * *	
709.45	Artificial respiration, ozone therapy, oxygen therapy, aerosol therapy or similar apparatus; breathing appliances, including gas masks and similar respirators; parts of the foregoing----------	* * *

[1] Defendant has abandoned another affirmative defense that the nasopharyngeal tubes are properly dutiable under item 709.06 as anesthetic apparatus.

[2] Applicable rates of duty omitted as they depend upon the date of entry.

The Record

The record includes the oral testimony of two witnesses on behalf of plaintiff, and one witness on behalf of defendant;[3] additionally, each party introduced five exhibits in evidence.

The pertinent facts may be summarized:

The articles in issue are various medical devices which assist a patient's breathing. A brief description of how each article is utilized follows:

The tracheotomy tube is inserted into the trachea through an incision in the anterior aspect of the neck where there is an obstruction between the mouth and the trachea (which the tube can circumvent) or where a post-operative patient has difficulty in breathing. This tube also may be used in patients having certain respiratory diseases such as asthma or emphysema. The tracheotomy tube may be connected to a ventilating machine that assists or assumes the patient's respiratory function, or the tube may be used alone if the patient can maintain an adequate level of respiration by simply using the tube.

A Tracheoflex is a type of tracheotomy tube containing a metal spiral component to prevent compression and kinking.

A tracheotomy cuff serves to make an air-tight seal around the tube so that no air will escape during the ventilation of the patient.

Nasopharyngeal tubes (or airways) are inserted through the nose and into the pharynx. These tubes are not used with ventilating machines or other apparatus, but serve merely to establish an airway to overcome an obstruction.

Opinion

1.

It is, of course, fundamental in classification cases that the protestant has the burden of establishing not only that the Government's classification was incorrect, but also of establishing the correctness of the classification asserted. Moreover, unless the plaintiff has established the propriety of its asserted classification, the protest must be overruled, and it is unnecessary to consider whether or not the Government's classification is wrong. See *United States* v. *National Starch Products, Inc.*, 50 CCPA 1, C.A.D. 809, 318 F. 2d 737 (1962), *cert. denied*, 373 U.S. 923 (1963), and cases cited therein; *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970).

Inasmuch as I have determined that plaintiff failed to establish the propriety of its claim under item 709.45, the protests are overruled

[3] Plaintiff's witnesses were: Roland Petersen-Frey, vice president and general manager of American Rusch Corp.; and Dr. Maximilian Schapira, a specialist in anesthesia and respiratory therapy.
Defendant's witness was: David Sheridan, president of National Catheter Corporation.

without reaching the issue of whether the merchandise was properly classified by the regional commissioner as catheters under item 709.09.

2.

While it is beyond dispute that the imports were designed to aid a person's breathing, and hence are literally "breathing appliances", I nevertheless have concluded they are not within the intended scope of item 709.45. This conclusion is predicated upon a long line of appellate authorities, cited *infra*, applying rules of statutory construction which are equally applicable here.

It is well settled that tariff provisions do not necessarily include everything that falls within their literal meaning, particularly where, demonstrably, there is contrary legislative intent. *General Methods Corporation* v. *United States*, 59 CCPA 109, C.A.D. 1049, 458 F. 2d 521 (1972); *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F. 2d 1308 (1970). And "[i]t is a familiar rule, that a thing may be within the letter of the statute and yet not within * * * its spirit, nor within the intention of its makers". *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459 (1892); *Barnebey-Cheney* v. *United States*, 61 CCPA 10, 14, C.A.D. 1110, 487 F. 2d 553, 556 (1973); *United States* v. *Hammond Lead Products, Inc.*, 58 CCPA 129, 139, C.A.D. 1017, 440 F. 2d 1024, 1031 (1971). Clearly, an *eo nomine* provision does not include all forms of the article *where there exists a contrary legislative intent;* [4] and "the common meaning of tariff terms as expressed in lexicographical authorities must yield to contrary legislative intent". *Heads and Threads* v. *United States*, 56 CCPA 95, 98, C.A.D. 960, 417 F. 2d 637, 639 (1969).

In Harrison v. *Northern Trust Co.*, 317 U.S. 476, 479 (1943), the United States Supreme Court reversed the Court of Appeals for the Seventh Circuit, observing:

> * * * The court below refused to examine the legislative history of § 807, on the ground that the section was unambiguous.
>
> But words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history *no matter how "clear the words may appear on 'superficial examination.'"* * * * [Emphasis added.]

See also: *Tidewater Oil Co.* v. *United States*, 409 U.S. 151, 157 (1972); and recently, *Cass* v. *United States*, 417 U.S. 72, 77–79 (1974).

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[4] The rule has been stated thusly: "'* * * an *eo nomine* statutory designation of an article, without limitation *or contrary legislative intent*, judicial decision, or administrative practice, includes all forms of the article". (Emphasis added.) See *Nomura (America) Corp.* v. *United States*, 58 CCPA 82, 85, C.A.D. 1007, 345 F. 2d 1319, 1321 (1971), and cases cited.

3.

In determining the legislative intent of item 709.45, plaintiff relies heavily upon the *Tariff Classification Study Explanatory and Background Materials* (1960), which is aptly described in plaintiff's brief "as one of the best reference sources for determining the legislative intent in connection with the Tariff Schedules of the United States". The study was submitted to Congress prior to the effective date of the TSUS, and has been frequently consulted by the Courts as an authoritative source for determining legislative intent. See e.g.: *Certified Blood Donor Services, Inc.* v. *United States*, 62 CCPA 66, C.A.D. 1147, 511 F. 2d 572 (1975); *Kurt S. Adler, Inc.* v. *United States*, 61 CCPA 68, C.A.D. 1122, 496 F. 2d 1220 (1974); *Albert E. Price, Inc.* v. *United States*, 60 CCPA 127, C.A.D. 1095, 476 F. 2d 1354 (1973); *Wayne Withrow Conrac Division* v. *United States*, 60 CCPA 144, C.A.D. 1101, 477 F. 2d 1393 (1973); *United States* v. *Cavalier Shipping Co., Inc.*, 60 CCPA 152, C.A.D. 1103, 478 F. 2d 1256 (1973); *United States* v. *Precise Imports Corp.*, 59 CCPA 113, C.A.D. 1050, 458 F. 2d 1376 (1972); *United States* v. *Pharmacia Fine Chemicals, Inc.*, 59 CCPA 196, C.A.D. 1066, 463 F. 2d 1370 (1972); *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F. 2d 1308 (1970); *Rifkin Textiles Corp.* v. *United States*, 54 CCPA 138, C.A.D. 925 (1967), *cert. denied*, 389 U.S. 931 (1967).

With reference to item 709.45, the *Tariff Classification Study* significantly discloses (schedule 7, part 2, page 146):

> Item 709.45 provides for apparatus used for artificial respiration, breathing aids of various types, and associated appliances. *These articles are currently dutiable under paragraph 353 or 372 at the rate of 13.75 or 11.5 percent ad valorem, respectively, depending on the essentiality of any electrical feature which may be incorporated in the apparatus or appliance.* These conflicting provisions have been combined into one item at a rate (12.5 percent ad valorem) which approximates the average of existing rates. [Emphasis added.]

Plaintiff argues that the *Tariff Classification Study* "gives absolutely no indication that articles such as those involved herein were intended to be excluded from classification under Item 709.45, *supra*"; and that "especially the words 'various types, and associated appliances' forces one to conclude that Congress intended the provision to include a very wide range of breathing aids".

On the other hand, plaintiff overlooks—and defendant correctly contends—that the *Tariff Classification Study* indicates Congress intended item 709.45 should cover mechanical or machine-like

apparatus which was dutiable under either paragraph 353 or paragraph 372, depending upon the presence of an essential electrical feature. Moreover, as pointed out by defendant, the study states that "various" breathing aids are covered by item 709.45, and does not state that "*all*" such aids are covered. The legislative history of item 709.45, seen in the passage quoted above from the *Tariff Classification Study*, is dispositive of the issue. *Cf.* our appellate court's very recent holding in *Certified Blood Donor Services, Inc., supra* (the *Tariff Classification Study* was held dispositive of the intended scope of item 437.76); *Astra Trading Corp.* v. *United States*, 65 Cust. Ct. 6, C.D. 4044 (1970).

In *United States, etc.* v. *Simon Saw & Steel Co.*, 51 CCPA 33, 40, C.A.D. 834 (1964), our appellate court commented:

> It is well established that the basic rule of construction applicable to any case involving the construction of a statute is that the intent of the Congress is to be given effect. Thus, for example, this court has said in *United States* v. *Clay Adams Co., Inc.*, 20 CCPA 285, 288, T.D. 46078:
>
> * * * All rules of construction must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rules. *The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent.* * * * [Emphasis added by CCPA.]

In summary, although the tracheotomy and nasopharyngeal tubes and other devices herein are literally "breathing appliances", nevertheless they are not within the intended scope of item 709.45, inasmuch as the *Tariff Classification Study* clearly indicates that the framers of the provision intended that such provision covers "articles * * * currently dutiable under paragraph 353 or 372 * * * depending on the essentiality of any electrical feature which may be incorporated in the apparatus or appliance". Based on the exhibits and testimony of record, it is readily apparent that the imports are not encompassed by paragraph 353 or paragraph 372.

4.

While the language in item 709.45 "including gas masks and similar respirators" was obviously intended to extend the scope of the provision,[5] the record however fails to establish that the articles in question are similar to gas masks, as urged by plaintiff.

For the foregoing reasons, plaintiff has failed to sustain its claim under item 709.45 and the protests are overruled. Judgment will be entered accordingly.

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[5] *Cf. United States* v. *Ampex Corp. et al.*, 59 CCPA 134, C.A.D. 1054, 460 F.2d 1086 (1972).

(C.D. 4600)

E. Dillingham, Inc. v. United States

Man-made fibers

Court Nos. 69/30706, etc.

Port of Ogdensburg

[Judgment of plaintiff.]

(Decided June 16, 1975)

Tompkins & Davidson (*Steven S. Weiser* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*David A. Ast*, trial attorney), for the defendant.

Ford, Judge: Plaintiff pursuant to rule 8.2 of the rules of this court has moved for summary judgment which involves the proper classification of certain defective merchandise described on the invoices as "nylon 66 tow," types 2072, 2472, 3002–5 and 3472, which was classified under item 309.30, Tariff Schedules of the United States, as modified by Presidential Proclamation 3822,[1] and assessed with duty at the rate of 13.5 cents per pound. Plaintiff contends the merchandise is properly subject to duty at the rate of 12 per centum ad valorem under item 309.75, Tariff Schedules of the United States, as modified by Presidential Proclamation 3822.[2] It is further contended by plaintiff that the issue involved has previously been determined in *E. Dillingham, Inc.* v. *United States*, 70 Cust. Ct. 43, C.D. 4406 (1973), since the merchandise is the same as established by affidavit of Abraham J. Rosenstein, a witness in the original case.

Defendant filed objection on the narrow ground that the document containing the statements of Mr. Rosenstein did not meet the requirements of an affidavit. Plaintiff responded by submitting a further affidavit by the notary public in which the affiant states Mr. Rosenstein appeared before him in the State of Connecticut and swore to the allegations contained in his affidavit. He further states he is a duly qualified notary public registered under the statutes of said state.

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[1] Grouped filaments and strips (in continuous form), whether known as tow, yarns, or by any other name:
Wholly of grouped filaments (except laminated filaments and plexiform filaments):
Of glass:
* * * * * * *
Other:
309.30 Valued not over 80 cents per pound ..... 13.5¢ per lb.

[2] Waste and advanced waste, of man-made fibers:
* * * * * * *
Advanced:
* * * Garnetted fibers ..... * * *
309.75 Other ..... 12% ad val.

Whether or not the affidavit was defective, the supplemental affidavit establishes to the satisfaction of the court that said document was duly sworn to before a notary public.

The affidavit insofar as is pertinent herein reads as follows:

1. I am the same Abraham J. Rosenstein who testified on behalf of the plaintiff in the case of *E. Dillingham, Inc.* v. *United States*, Court No. 71–8–00856, on September 22, 1972 at the United States Customs Court, One Federal Plaza, New York, New York, and I am familiar with my testimony there given.

2. During the period 1955 through 1972, I was president of Hartford Spinning (Canada) Ltd.

3. My duties in that position included the purchasing of raw materials, sales, manufacturing and exportation of the products Hartford produced.

4. During the year 1969, my firm exported to the United States waste yarn which was invoiced as "nylon 66 tow" and identified by the following type numbers: 3472, 2472, 2072 and 3002–5.

5. I am personally familiar by reason of my duties and prior experience, with the manner in which the types enumerated in paragraph "4" were manufactured, how they were utilized by the ultimate purchaser and what their potential uses were.

6. I know that said types were the same in all material respects as those imported during the period 1970–1972 under the same type numbers but invoiced as "advanced waste" based upon the following:

a. The price range of the merchandise was the same whether invoiced as "nylon 66 tow" or "advanced waste";
b. Customers who initially bought a particular type number as "nylon 66 tow" reordered and accepted the same type number described as "advanced waste" for subsequent shipments; and,
c. The books and records of my firm establish that the same groupings of the merchandise, according to average denier, were shipped whether described as "advanced waste" or "nylon 66 tow".

7. Said types were, in fact, not tow but the same in all respects as the merchandise the subject of *E. Dillingham, Inc.* v. *United States*, Court No. 71–8–00856, that is, advanced waste and my testimony in that case is equally applicable to the types herein, to wit, that the merchandise:

a. was defective and could not be used for its original purpose as yarn without further processing;
b. was advanced from its original condition by the process of creeling;
c. could not be utilized for spinning or wearing [sic] even after creeling;

d. was composed of filaments which were intentionally twisted by a draw twister to hold them together; and,
e. was not garnetted.

8. It has been my experience that all shipments of said types in 1969 contained merchandise which was consistent in that the groupings of advanced waste did not vary significantly within any particular type number and that at no time did a purchaser of such a type return it by reason of non-conformity with that which was ordered.

Following the principles laid down in *Dillingham, supra*, I find plaintiff has sustained its burden of proof and said merchandise is dutiable as claimed. Plaintiff's motion for summary judgment is hereby granted.

Judgment will be entered accordingly.

(C.D. 4601)

E. DILLINGHAM, INC. *v.* UNITED STATES

Shoe machinery

Molds used with the Bata Monoplax Atlas Unit for the production of footwear held properly classified under paragraph 353, Tariff Act of 1930, as modified, as parts of articles having as an essential feature an electrical element or device and not free of duty under paragraph 1643, as amended, as shoe machinery, in whole or in part.

SHOE MACHINERY—EVIDENCE—BURDEN OF PROOF

To sustain its claim, plaintiff must establish that the Bata Monoplax, a slush molding machine, is a special kind of slush pour-type machinery in a class by itself, particularly adapted and used for the production of footwear, and that it constitutes shoe machinery for tariff purposes, although it is used to produce boots and overshoes as well as shoes.

While the Bata Monoplax may be an improved version of slush molding machinery of the two-pour type, the evidence does not establish that it is a special kind in a class by itself. Since there is no proof that slush molding pour-type machinery was chiefly used in the manufacture of shoes at the time of these importations, plaintiff's claim cannot be sustained. *Converse Rubber Co.* v. *United States*, 69 Cust. Ct. 55, C.D. 4374 (1972), distinguished.

JURISDICTION

The entry papers, the protest, and the complaint covering molds repaired abroad and assessed with duty on the cost of repairs pursuant to paragraphs 353 and 1615, Tariff Act of 1930, as modified, are sufficient to bring the merchandise and the issue before the court.

Court Nos. 62/15969, etc.

Port of Ogdensburg

[Judgment for defendant.]

(Decided June 24, 1975)

Allerton deC. Tompkins for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

FORD, Judge: The merchandise at bar consists of various molds used with the Bata Monoplax Atlas Unit (hereinafter called the Bata Monoplax) for the production of footwear. The molds were imported from Canada during the years 1959–1963 and were assessed with duty under paragraph 353, Tariff Act of 1930, as modified, as parts of articles having as an essential feature an electrical element or device, and are claimed to be free of duty under paragraph 1643, as shoe machinery, in whole or in part.

The pertinent provisions of the tariff act are as follows:

Classification:

Paragraph 353, Tariff Act of 1930, as modified by Presidential Proclamations 2929, 3468, and 3479:

Articles having as an essential feature an electrical element or device, such as electric motors, * * * finished or unfinished, wholly or in chief value of metal, and not specially provided for:	
* * * * * * *	
Other (except * * *)	13¾% ad val.
[Effective July 1, 1962]	12½% ad val.
Parts, finished or unfinished, wholly or in chief value of metal, not specially provided for, of articles provided for in any item 353 of this Part (not including X-ray tubes or parts thereof)	The same rate of duty as the articles of which they are parts.

Claim:

Paragraph 1643, Tariff Act of 1930, as amended:

Linotype * * * machines, shoe machinery, * * * all the foregoing whether in whole or in part, including repair parts.	[Free]

The complaint covers 12 protests, consolidated for trial under the caption *Bata Shoe Co., Inc., et al.* v. *United States*, Court No. 61/5029. At the trial plaintiff abandoned Court Nos. 61/5029 and 63/4482 and the action was recaptioned as shown above. It further appears that 10 entries listed in the complaint under Court No. 62/18754 are in fact covered by Court No. 62/18755. At the trial plaintiff further limited its claim to the protests and entries listed on exhibit 14. Accordingly, this action is dismissed as to all entries not listed on exhibit 14, a copy of which is annexed hereto.

Defendant claims in addition that the merchandise covered by entry No. 0–1062 of Court No. 65/19813 was not placed in issue by the pleadings and that the action should be dismissed as to said entry. An examination of the entry papers reveals that the imported molds, which had been repaired abroad, were assessed with duty on the cost of repairs under paragraph 353, *supra*, and paragraph 1615, Tariff Act of 1930, as amended. The latter provides in subsection (g)(1) that any articles exported for repairs may be returned upon payment of duty upon the value of the repairs at the rate or rates which would apply to the article itself. The entry papers, the protest, and the complaint are sufficient to bring the merchandise and the issue before the court. *The Rubberset Company et al.* v. *United States*, 68 Cust. Ct. 370, C.R.D. 72–9, 342 F. Supp. 749 (1972); *Ehrenreich Photo Optical Industries, Inc.* v. *United States*, 71 Cust. Ct. 257, C.R.D. 73–18 (1973).

There was incorporated in this action the record in the case of *E. Dillingham, Inc.* v. *United States*, 65 Cust. Ct. 224, C.D. 4082 (1970), which in turn incorporated the record in *E. Dillingham, Inc.* v. *United States*, 56 Cust. Ct. 392, C.D. 2664 (1966), *aff'd*, 54 CCPA 121, C.A.D. 922 (1967).

The earlier *Dillingham* case involved the classification of the Bata Monoplax machine itself, whereas the later case related to a mold designed for use with the Bata Monoplax to produce an overshoe known as the Susan Boot. The instant case involves molds for the Bata Monoplax, for use in the production of footwear, including the Susan Boot.

In both the prior cases it was claimed the Bata Monoplax was chiefly used for the production of shoes and that the machine or the molds therefor were entitled to free entry under paragraph 1643. In neither case was plaintiff's claim sustained. In the earlier case, the Court of Customs and Patent Appeals stated (54 CCPA 121, 123–125):

> The Customs Court found that for an article to fall within the provisions for shoe machinery as contained in paragraph 1643 of the statute it must be chiefly used in a manufacturing operation upon shoes. Further, such chief use must be established by posi-

tive testimony with respect to merchandise of the same class or kind. *L. Tobert Co., Inc., American Shipping Co.* v. *United States*, 41 CCPA 161, C.A.D. 544; *United States* v. *Spreckels Creameries, Inc.*, 17 CCPA 400, T.D. 43835. The Customs Court then concluded that Mr. Bara was not sufficiently qualified to testify as to the chief use of the imported merchandise, * * *

* * * * * * *

We are in agreement with the decision of the court below.

* * * * * * *

It is well established that the collector's classification is presumed to be correct, *F. H. Kaysing* v. *United States*, 49 CCPA 69, C.A.D. 798, and that the burden of proving chief use of the imported merchandise is on the importer who protests the classification of the collector, *United States* v. *Bruce Duncan Co., Inc.*, 50 CCPA 43, C.A.D. 817. In the present case appellant has entirely failed to establish any chief use for the merchandise in question. We find the testimony of Mr. Bara is without substantial probative value with respect to the question of chief use. For all we know, the imported machinery may be used in any manufacturing operation where molding is one step. * * *

The fact that the imported article is being used in the manufacture of shoes is insufficient to establish chief use. * * *

In the later case (65 Cust. Ct. 224), this court found the Bata Monoplax was a slush molding machine but that the evidence did not establish that it belonged to a class or kind of slush molding machinery that was chiefly used as shoe machinery. The court consulted a number of authorities on plastics and their production and concluded (p. 229):

It is evident that slush molding is not limited to the production of footwear. Therefore, to establish that the Bata monoplax unit belongs to a class of merchandise chiefly used as shoe machinery, it would have to be shown that there is a kind of slush molding machinery which is chiefly used as shoe machinery and that the Bata monoplax unit belongs to that class. Such evidence is lacking in the instant case. The witnesses were familiar only with machinery used in the footwear industry and could make no comparison with slush molding machinery used for general purposes. While they knew of no use of the Bata monoplax unit for the manufacture of articles other than footwear, it may well be that it could be so used. According to the record, it can produce different types of footwear with the use of different molds and some adjustment of the machinery. It is therefore reasonable to assume that the Bata unit itself could be adapted to the production of other slush molded articles.

The instant case was initiated in an effort to supply evidence found to be lacking or insufficient in the two prior cases. In support of its position plaintiff called two witnesses, Loren Waddell, assistant chief engineer of the Bata Shoe Company, and George Hollington, project development manager for new processes and techniques of that com-

pany, and introduced exhibits depicting the various types of footwear produced from the imported molds (exhibits 1–13, 15); a mold and mold holder riveted together (exhibit 16), and the Bata Monoplax machine in various stages of operation (exhibits 17–19).

Mr. Hollington, plaintiff's principal witness on the issues at bar, is a graduate of the National School of Rubber Technology and of the Plastics Institute, both located in London. He is a fellow of the Boot and Shoe Institution and an associate of the Institution of Rubber Industry, and has written several books on footwear technology. He has been with the Bata organization for 40 years, starting in 1934 when he went to Czechoslovakia to train as a rubber shoe technologist. He also served in England and India for Bata. In 1973, he came to the United States for Bata as project development manager for new processes. This was subsequent to the importations before the court.

The following description of the Bata Monoplax and its method of operation is derived from the testimony in this case and the prior cases of Mr. Hollington and Charles Bara, Jr., assistant plant engineer of Bata's Belcamp, Maryland plant.

The Bata Monoplax is an oval-shaped unit approximately 100 feet long, having a conveyor belt to which 86 shoe mold holders may be attached. Shoe molds are permanently affixed to the holders which are designed to fit the carriage so that they can be changed easily in order to produce footwear in different sizes and models. The footwear is made from a thermoplastic material called plastisol, consisting of polyvinyl chloride, a plasticizer, and other ingredients. Different formulae are used in accordance with the particular product desired.

At the start of the operation, plastisol is poured into the shoe mold to fill it partially. The mold is then tipped into a toe-down position and is rocked in four different directions in order to let the air escape and prevent air bubbles from being trapped in the materials. Then the mold is returned to a sole-down position and filled completely with the same material. Heat is applied to the bottom of the soles of the shoe molds. This starts the jelling or building up of the material inside the mold. As the shoe mold continues around the unit, more heat is applied to the side of the shoe so the building up operation can start there. When the shoe has sufficient thickness built up inside the mold, the mold is inverted to the sole-up position, which allows the excess material to be drained out. The mold continues around the unit and is carried through a fusing oven. After the article is fused, it is carried through a cooling station and is subjected to a stream of air and water which cools the mold and the shoe which is being formed inside the mold. This allows the shoe to spring and enables the operator

to pull it out of the mold with the help of air pressure. The molds remain on the carrier and the cycle starts again.

The Bata Monoplax has four different filling stations and a unit called the flocking unit, the purpose of which is to insert a powderlike form which will stick to the material being jelled and give to the shoe the impression of being lined. The molds are specifically designed for use with the Bata Monoplax and cannot be used with any other apparatus.

The witness Hollington stressed that the Bata Monoplax has several pouring and filling stations; that with footwear it is necessary to make provision for forming two skins or three different types of plastisol materials, having varying hardnesses, colors, and flexibilities, and that it must be possible to build up the skin in areas where it is needed, such as for soles and heels. This could not be done according to the witness in any other way than by pouring, tipping out, refilling and tipping out, which is the Monoplax process. Mr. Kotek, a machinery development engineer of the Bata organization, testified in the second *Dillingham* case (65 Cust. Ct. 224) that for building up the hard substance of the sole and heel it is necessary that more heat be put on the molds. Mr. Bara also stated that building a shoe in proper thicknesses requires changes in the application of heat.

According to Mr. Hollington, there are two classes of machinery in which plastisols and slush molding processes are or were used. One is a rotational molding or casting process and the other a pouring process. In the former, which came into operation in 1951, a specific amount of material is placed in the mold and it is rotated to create a centrifugal force so that a uniform skin is formed inside the mold. After heating the mold, causing a solidification of the plastisol, the mold is opened in two halves and the article extracted. This method is still in use and is employed to produce balls, dolls, and toys.

The slush molding pour method was developed in London in 1955, 1956, and 1957. The witness agreed with the following description of that method, which was read to him by defendant's counsel from the *Plastics Engineering Handbook* of the Society of the Plastics Industry, Inc. (p. 311).

> * * * molds are placed on a conveyor belt having positions for as many molds as desired. The vinyl plastisol is poured into a mold until it is filled to the top. This mold, on the conveyor belt, is carried through an oven where temperatures between 210° and 600° Fahrenheit jell the plastisol next to the wall of the mold. The thickness of this jelled plastisol at a given oven temperature is determined by several factors, such as the thickness of the metal wall of the mold, the length of time the mold is in the oven, and the jelling characteristics of the plastisol used. The mold is now turned upside down, and the plastisol remaining in liquid form is

> dumped out, while the semi-fused material next to the wall remains in place. The mold is then carried to the second oven, where the coating is completely fused. Passage through a cooling chamber cools the mold sufficiently to permit removal of the finished piece by blowing it out with compressed air or collapsing it with vacuum. * * *

The witness agreed that this was a fair description of the process Bata uses except that it could be used for articles other than shoes. He also testified that slush molding processes of the pouring type were used during the period 1957–1961 to produce toys, such as dolls and animals. According to the witness, this method has been replaced by new and more efficient techniques, such as blow molding. He distinguished the slush molding machines used to produce toys from the Bata Monoplax as follows:

> Those machines were strictly constructed for single pouring techniques, whereas the monoplax unit on which we produce footwear is designed to produce a variety of pouring systems. On the original toy slush molded machines, only single skin formations in the product could be made.
>
> * * * * * * *
>
> If I want to produce an article by slush molding, first I have to determine what type of article it is. If it is a toy, than I would need a single pouring system; whereas, if I was producing footwear, then I would have to design the equipment for several station pourings and dumpings, of course. This is the main difference. Otherwise, the technique of slush molding is as was described to me on the script by this gentleman there.

Mr. Hollington stated that the slush molding machines using the pouring method, other than the Bata Monoplax, had a single filling station and the product had a single skin of a certain specific substance, determined by the heat and the time during which the mold went through the oven. In this opinion, it was not commercially feasible to adapt the Bata Monoplax to the production of articles other than footwear. He had never known of any other article produced with the Bata Monoplax. Mr. Hollington testified that it could not be used for other manufacturing operations where molding was one step in the operation. To his knowledge, there was no slush molding pour-type machine in the United States in 1959–1963 similar to the Bata Monoplax.

For the imported merchandise to be classified as parts of shoe machinery, it must be established that the Bata Monoplax belongs to a class or kind of merchandise chiefly used in the production of shoes. Since it is not disputed that the Bata Monoplax is a slush molding machine and is used in the production of footwear, the issues are narrowed to (1) whether the Bata Monoplax is a special kind of slush

molding pour-type machinery in a class by itself, particularly adapted and used for the production of footwear, and (2) if so, whether it constitutes shoe machinery for tariff purposes, in view of the fact that it is used to produce boots and overshoes, as well as shoes.

Plaintiff relies on *Converse Rubber Co.* v. *United States*, 69 Cust. Ct. 55, C.D. 4374 (1972). That case involved a multiple station rotary table injection molding machine used in the manufacture of soles for sneakers. Four types of injection molding machines were identified and their processes and uses described. The court noted that while all the machines contained a press section, place to mount the mold, a clamp to hold it, and an injection end which prepared the material for injection in a mold, they were economically suited for different types of operation. Efforts had been made to sell the imported machine to gasket and gear manufacturing companies and those making floormats, scales, etc., but those efforts had been unsuccessful because of the small size of the platen. The platen was, however, uniquely suited for the production of shoe soles. The court concluded (p. 58):

> * * * While defendant's exhibit A depicts various uses other than shoes, the present record establishes that by virtue of the small size of the platen, the production for all practical purposes of these items is economically unfeasible except for the manufacture of soles for shoes. The question of economics appears to be a determining factor as to which type of molding machine will be used in a particular industry. Accordingly, we feel the multiple station rotary press is a class or kind unto itself. The use or operation of a rotary machine is not any more similar to the horizontal, vertical or shuttle type press than is a motorcycle to an automobile. While the Desma machine belongs to the broad class of injection molding machines, it is not a general purpose machine, according to the record, but it is a specialized machine particularly adapted for and used in the manufacture of shoes. *United States* v. *Hudson Shipping Co., Inc., et al.*, 49 CCPA 92, 96, C.A.D. 802 (1962).

In the instant case, while Mr. Hollington agreed that the Bata Monoplax was a slush molding machine of the pour type, he attempted to distinguish it from other slush molding machines on the basis that they had only one pouring station while the Bata Monoplax had several and was designed and used only for the production of footwear. Mr. Hollington's testimony in this regard is not conclusive, however, in view of the following: His entire experience, except for a period during the war, was with the Bata organization, whose business is the manufacture of footwear. He was employed in Czechoslovakia, the United Kingdom, and India and did not come to the United States until 1973. He was not in the United States during the period covered by these importations. While the witness testified he had attended seminars and technical conferences here before becoming a resident,

there is no evidence as to the dates of the conferences nor the topics covered. He said he had visited plants where products other than footwear were produced on slush molding machines, but did not mention any plant, city or state within the United States where he had made observations nor the brand name of any slush molding machine he had seen. The witness apparently had no knowledge of any slush molding machine using the double-pour system, hereinafter mentioned.

That Mr. Hollington was unfamiliar with slush molding machines in the United States, even those producing footwear, is further indicated by his lack of knowledge of the merchandise involved in *W. A. Gleeson* v. *United States*, 58 CCPA 17, C.A.D. 998, 432 F. 2d 1403 (1970). That merchandise was described as rebuilt equipment for slush molding plastic footwear, was manufactured by British Rubber Co. in Canada, and imported in 1957 for Converse Rubber Co. The court described the machine as "made up of a series of eight stations, which include a preheating oven, a station where liquid plastic is poured into a mold, a heating table, a gelling oven, a drying table, a flocking station, and a fusing oven." In that case the court held the evidence insufficient to establish that the merchandise was of a class or kind chiefly used in a shoe manufacturing operation, since chief use "envisions use by users, as a whole, of the type of commodity involved, and not merely individual use of the particular shipment in question."

In none of the cases involving the Bata Monoplax were witnesses called who had actual experience outside the Bata organization or with slush molding machines other than the Bata Monoplax. Therefore, in order to compare the Bata Monoplax with other slush molding equipment, the court must turn to authoritative literature on the subject.

According to the authorities, there are a number of methods of plastisol molding, including rotational molding and slush molding. *Modern Plastics Encyclopedia*, 1966; DuBois & John, *Plastics*, 1967.

In discussing slush molding in the *Modern Plastics Encyclopedia*, 1966, and prior editions, it is pointed out that most of the production lines using slush molding follow one of two basic systems: single-pour or double-pour, both of which are readily adapted to conveyorized lines. The double-pour system is described as follows (pp. 847-850):

> *In the two-pour method*, the cold mold is filled, usually by gravity or by pumping, and vibrated to remove bubbles. It is then dumped, leaving a thin film of plastisol on the surface. By filling a cold mold in this manner there is less chance of entrapping air or of any possible gelation taking place over fine details at the extremities.

> After dumping and draining, the mold is passed through an infra-red or hot-air oven to fuse or semi-fuse the first skin. After passing through the first pour oven, the mold is filled a second time, dumped, and allowed to drain. The length of time the mold is in the first oven determines the wall thickness of the final part because the heat of the mold retained from the setting or fusing of the first skin will determine the ultimate thickness of plastisol deposited on the walls of the mold. The mold is then passed through a second oven for final fusing of the plastisol part and is cooled and stripped.
>
> Sponge plastisol may be similarly handled when items such as boot socks and toys are manufactured completely of sponge. When a plastisol skin-sponge combination is desired, a two-pour system is used, with sponge vinyl plastisol poured in the second step.

Similar descriptions appear in DuBois & John, *op. cit.*, and the *Plastics Engineering Handbook*. The latter includes illustrations of typical slush-molded articles, these being dolls and doll parts.

A comparison of the descriptions of slush molding machinery of the two-pour type with the testimony regarding the Bata Monoplax indicates that the latter is a more sophisticated version of the former, with additional pouring stations. The method of operation of the two are comparable. While the Bata Monoplax was designed for and used in the production of footwear by the Bata organization, there is no evidence that anyone ever tried, successfully or unsuccessfully, to use the machine for the production of other articles or that it was offered for sale to firms making other products. The Bata organization evidently kept the machine for its own use and that use was in the manufacture of footwear.

The evidence does not establish that the Bata Monoplax is so distinct from other slush molding machinery of the double-pour type as to constitute a separate class, nor has it been shown that it would be practically or economically unfeasible to use it, with some adaptation, for the production of articles other than footwear. According to Mr. Hollington, slush molding pour-type machines would be constructed somewhat differently in order to produce the particular articles desired. In *Plastics Engineering Handbook*, it is stated (p. 311):

> * * * There are many different designs of slush-molding machinery. The design will depend on the end product. The methods of slush-molding are being constantly improved and mechanized. * * *

This case is distinguishable from *Converse Rubber Co.* v. *United States, supra*, wherein it was shown that there were several kinds of injection molding machines, each suitable for different purposes; that

the rotary type was especially suited to the manufacture of shoe soles because of the small size of the platen, and that efforts had been made, unsuccessfully, to sell it to manufacturers of other merchandise. No such showing has been made here.

The court, therefore, concludes that while the Bata Monoplax may be an improved kind of slush molding pour-type machine, it has not been established that it is a special kind of slush molding pour-type machinery in a class by itself. Mr. Hollington testified that the adaptation of slush molding machinery for use in the production of footwear required only a change in pouring and filling stations and that the technique was the same. Since there is no proof that slush molding pour-type machinery was chiefly used in the manufacture of shoes at the time of these importations, plaintiff's claim cannot be sustained.

Accordingly, the action is dismissed and judgment will be entered for the defendant.

(C.D. 4602)

AMACO, INC. *v.* UNITED STATES

Optical instruments

The imported article is an inspection unit that incorporates an optical element, used to check and inspect ampoules (that contain a solution for hypodermic injection under the skin) for dust particles and glass splinters. The inspection unit was classified as an optical checking instrument under TSUS item 710.90 and plaintiff claims it should be classified as a machine, not specially provided for, under TSUS item 678.50.

The term "optical instruments" is defined in TSUS as embracing instruments which incorporate one or more optical elements, but does not include any instrument in which the incorporated element or elements are solely for viewing a scale or for some other subsidiary purpose. In its argument of the facts and certain judicially established criteria for classification of "optical instruments" under tariff acts earlier than TSUS, plaintiff has noticeably not cited or discussed the statutory definition of the term "optical instruments" in TSUS.

HELD. On the record and argument in this case, considering the term "optical instruments" as defined in TSUS, plaintiff has not overcome the presumption that the imported unit is classifiable under TSUS item 710.90 as an optical checking instrument.

Court No. 69/30917

Port of Philadelphia

[Judgment for defendant.]

(Decided June 25, 1975)

Schwartz & Lidstrom (*Earl R. Lidstrom* of counsel); *Barnes, Richardson & Colburn* (*Peter J. Fitch* of counsel); for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Gilbert Lee Sandler*, trial attorney), for the defendant.

LANDIS, Judge: This action involves the tariff classification of a "Strunck Ampoule Inspection Unite, Type ADG 500", imported from West Germany and entered at Philadelphia in 1967. The record establishes that the unit is used by pharmaceutical manufacturers to inspect and check ampoules that are small bulbous glass vessels hermetically sealed to hold a solution for hypodermic injection under the skin.

Customs officials assessed the imported unit at 50 per centum ad valorem under the TSUS (Tariff Schedules of the United States) item 710.90 classification as follows:

	Optical measuring or checking instruments and appliances not provided for elsewhere in subpart C, D, or F of this part, and parts thereof:	
* * *	Profile projectors and parts thereof	* * *
* * *	Comparator, comparator benches, measuring benches, and micrometric reading apparatus, all the foregoing and parts thereof	* * *
710.90	Other	50% ad val.

Plaintiff claims that for tariff purposes the inspection unit is not an optical checking instrument or appliance and is properly classifiable under TSUS item 678.50 as a machine not specially provided for, dutiable at only 10 per centum ad valorem.

The TSUS item 710.90 under which classification was made by customs is conceded by plaintiff to be more specific than the TSUS item 678.50 under which classification is claimed. Where two possible classifications apply to an imported article, the proper classification is under the provision which describes the item most specifically (TSUS, General Headnotes and Rules of Interpretation 10(c)). For purposes of classification under item 710.90, plaintiff also concedes that the inspection performed by the imported unit is a checking function. The issue joined and briefed by both sides is whether the

imported unit is "optical", in the sense that TSUS classifies optical checking instruments and appliances in schedule 7, part 2, subpart C, item 710.90. Relevant to that issue schedule 7, part 2, provides that as a matter of law:

> Part 2 headnotes:
>
> * * * * * * *
>
> 3. The term "optical instruments", as used in this part, embraces only instruments which incorporate one or more optical elements, but does not include any instrument in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.[1]

In the context of the term "optical instruments", customs is presumed to have found each and every fact necessary to support the classification of the imported unit as an optical checking instrument under item 710.90. Cf. *Chas. Kurz Co.* v. *United States*, 57 Cust. Ct. 90, C.D. 2735 (1966). The parties have stipulated that the imported unit does, as a matter of fact, incorporate an optical element, to wit, "a lens with a magnifying power of 1:2.5". Upon weighing the material documentary and testimonial evidence next discussed, I conclude that plaintiff has failed to overcome the presumption that the optical element is not incorporated in the imported unit "solely for viewing a scale or for some other subsidiary purpose." [2]

For the record, the parties have stipulated the following facts:

> 1. The physical features, and method of operation, of the subject imported "Strunck Ampoule Inspection Unite, Type ADG 500" (which is the same in all material respects as the "Model KVL A 05," and which is hereafter referred to as the "ADG 500") are accurately described in the materials annexed to the instant stipulation, and made a part hereof [identified as Collective Exhibit D(1) through D(7)]. Said materials are a part of the "Operating Instructions" prepared by the manufacturer (H. Strunck & Co.) and supplied to the ultimate purchaser of the subject ADG 500 at the time of its purchase.

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[1] The report submitted to the House and Senate Committees on TSUS advised that "Headnote 3 * * * [is] a definition of the term 'optical instruments'." Tariff Classification Study, Schedule 7, page 140.

[2] The Tariff Classification Study, Schedule 7, critiques the classification of items 710.86 through 710.90 as follows:

> * * * The third superior heading in this subpart would provide for "optical measuring or checking instruments and appliances not provided for elsewhere in subpart C, D, or F of this part". These three items (which were included in subpart D of this part in the draft published for public hearings) embrace a number of optical instruments used for measuring and checking materials and products in laboratories, machine shops, inspection stations and the like. Such instruments would include profile projectors used for checking the shape and dimensions of machined articles, optical comparators, comparator and measuring benches, interferometers, optical surface testers, alignment telescopes, micrometric reading apparatus and similar instruments. The instruments included in these categories all incorporate optical devices of various types, but instruments whose only optical element consists of a magnifying device for reading scales or for carrying out adjustments are not included (see headnote 3 of this part). * * * [Page 150.]

2. The ADG 500, in its imported condition, included a "lens hood" or "lens case" (hereafter referred to as the "case") which incorporated a lens with a magnifying power of 1:2.5.

3. In addition to the semi-circular light-deflecting hood [which is visible on the front of the case, as shown in Collective Exhibit D(6)], the back of the case included a metal "hood" which (a) consists of four metal plates, joined at right angles and attached to the back of the case, (b) tapers down in size as it extends back from the perimeter of the lens to the inspection station, giving the appearance of a megaphone, closed off by the lens at the large end, opened at the rectangularly-shaped smaller end, and with squared-off edges running its length, and (c) serves the purpose of deflecting stray light that might otherwise enter the area between the inspection station and lens. Said "hood" must first be unscrewed from the rest of the case in order to remove the lens from the case.

4. The lens case (including the "hood" described in paragraph 3, *supra*), was designed so that it may be swung open on the hinges which are on its left side and which affix the case to the ADG 500, but the case can be physically removed and detached from the ADG 500 only by unscrewing the hinges.

5. A high intensity bulb, located within the ADG 500 beneath the inspection station, serves as the source of illumination of the ampoules and their contents while being inspected in the inspection station.

6. A total of two ADG 500's were imported by plaintiff and those are the only two, to the knowledge of the parties, to have ever been imported into the United States. Both ADG 500's were imported with their own lenses and lens cases; both have been in continuous use for ampoule inspection since shortly after their importations; and in such use, both have always been operated by inspecting the ampoules and their contents through the magnifying lens.

Collective exhibit D(1), referred to in the stipulation, is entitled "Operating Instruction ADG 500." It describes the imported unit's "Method of Operation" as follows:

Method of Operation and Description

With this machine a visual control of the contents of the ampoules can be effected in order to detect foreign particles.

5 ampoules are transported out of the magazine by a transport worm into the inspection station.

The 5 ampoules are elevated, set into rotation, and after this brought to standstill.

After the sudden stopping the contents of the ampoules is still spinning so that any foreign particles like dust particles or glass splinters can [be] easily detected through the lens with a magnifying power of 1:2.5. Charrings of the ampoule top and hairline cracks can be detected as well.

It is possible to repeat the spinning by pressing the repetition button.

The ampoule considered as bad is released by pressing a button and is eliminated into a container.

The ampoules considered as good are lowered, transported out of the inspection station and sorted into a receiver.

The time of inspection, e.g. the time between stopping and lowering of the ampoules can be regulated by a timing relay.

The only witness who appeared and testified in this case is Mr. Gerard Ziffer, president of Amaco, Inc.—plaintiff. Much of what he testified to is relevantly covered by the stipulated facts. Mr. Ziffer additionally testified that he first saw the imported unit many years ago. In his words, it represented "one of the first devices which made it easier for the operator to inspect ampoules. Up to that time, ampoules, glassware of any type in the pharmaceutical industry were [usually] manually inspected." He affirmed that a manual inspection "took place after the inspector shook the ampoule." He elaborated that in a manual inspection the inspectors merely "gather ampoules, usually physically, or manually, into their hand and look at them, checking them." The inspector, he said, visually checks for "particles which may float about inside [the ampoule], just the same as you check a bottle to see if there is any sediment. If there is any sediment in the bottle it will rise and, if there are any impurities, they will reject the ampoules, put it down again, and pick up another lot."

Relevant to the imported unit, Mr. Ziffer testified that it requires an operator and that the prime function of the unit "is an aid to the determination of the presence or absence of impurities within the glass containers." Asked if an optical element is involved in the operation of the unit, Mr. Ziffer first stated that he did not understand the question. When counsel clarified that Mr. Ziffer had "given the Court a description of the operation from the entry of the ampoule into the device to the inspection and either the passing or rejecting of the ampoule" [3] and counsel wanted to know if Mr. Ziffer had indicated in that operation the use of any optical elements, Mr. Ziffer replied: "No, I haven't but—" at which point counsel interrupted to ask if the described operation was "complete and adequate to perform the function of inspecting ampoules for impurities" to which Mr. Ziffer answered "Yes". Asked if an optical element is ever "used in the operation" of the imported unit, Mr. Ziffer answered "Yes" and stated that the optical element "can be" part of the unit but is not a necessary function of the unit. He testified that the optical lens is

[3] Mr. Ziffer's description of the operation was not substantially different from the stipulated "Method of Operation" quoted in the opinion, *supra*.

attached to a hood which shields out extraneous light during the inspection and stated that the hood is also not necessary to the operation of the unit. When asked the purpose or function of the lens, Mr. Ziffer stated that the unit "can be used without the lens or without anything in front of the operator. We discourage it." What the lens does according to Mr. Ziffer is make it easier for the operator to see [the ampoule under inspection] and the lens acts as a safety device against flying glass should an ampoule break during the spinning phase at fairly high speed incident to the inspection. When that happens the glass flies all over the place and this could be injurious to the operator. If there was no lens there, the operator would either have to wear safety glasses or any other device, a shield would have to be put in there. "We can", he said, "instead of the lens, also provide a glass shield as a safety device." Mr. Ziffer also testified that the lens is not imported with the unit but said the lens "could have been imported * * * with the first machine which might have been at the special request of the customer." (Paragraph 6 of the stipulation quoted, *supra*, however, recites facts directly contrary.)

In concluding his direct testimony, Mr. Ziffer testified that the function and purpose of the imported unit is as "an aid to the determination of the presence or absence of impurities within the glass containers" and stated that said function is accomplished without the use of the optical lens.

On cross-examination, Mr. Ziffer was asked if the imported unit increased the "productivity" of inspection to which he replied that the imported unit itself "does very little except it is an additional aid for the person who inspects." The quality of the inspection, he said, depends on that person and the productivity would, of course, be one hundred percent greater with the machine than it would be if the inspection was done "manually". Mr. Ziffer further stated that the imported unit incorporates a bulb designed to throw light through the ampoules to help illuminate the liquid solution in the ampoules under inspection; that inspection with the imported unit is carried out in a "darkened" or "dimmed" room to make it easier for the operator to view the ampoules; and that the optical lens enlarges the ampoules which makes it easier for the operator to inspect them. The spinning phase of the inspection process with the imported unit, Mr. Ziffer stated, precedes the visual examination of the five ampoules viewed through the optical lens. Mr. Ziffer stated that the imported unit is never sold without the optical lens and the unit is intended to be used with the optical lens although "they don't have to" because, in his not one hundred percent certain recollection, the hood to which the lens is attached is removable from the unit.

Under title "Summary of Argument" in its brief, plaintiff has stated its position with respect to the classification of the imported unit as follows:

> Even though imported with a hood containing an optical element (lens with magnifying power of 1:2.5), the imported article is not an "optical" instrument within the scope of item 710.90. The imported machine is obviously intended to assist an operator to inspect ampoules visually by mechanically agitating the contents in a certain manner and placing possible impurities in a position in which they can be seen. However, this is not done by means of optics.
>
> The only optical element ever present during the operation of the machine is a lens having a magnifying power of 1:2.5. That lens is not necessary to the operation of the machine and should not control the classification of the machine. The aid provided by the lens is incidental to the function of the machine.
>
> The lens does not meet the judicially established criteria to control classification.

What plaintiff noticeably has not cited or discussed is the statutory headnote that says the term "optical instruments" embraces instruments which incorporate at least one optical element that is not for viewing a scale or for some other subsidiary purpose. The statute cannot be ignored. The testimonial evidence does not creditably support plaintiff's contention that the imported article is not an optical instrument within the scope of TSUS item 710.90.

Mr. Ziffer's testimony, suggesting that the imported unit is imported without the optical element and that the imported unit performs the checking function as intended without the optical element, simply does not square with the testimony of the witness that the lens makes it easier to see the ampoule under inspection and acts as a safety device from flying glass which could be injurious to the operator and that if there was no lens the operator would have to wear safety glasses or a shield would have to be put in there. Nor does it square with what the parties have stipulated, namely, that only two units have been imported, both with "their own lenses " and both "always * * * operated by inspecting the ampoules and their contents through the magnifying lens."

What plaintiff has done is to marshal the facts into an argument that separates the mechanical parts of the imported unit from the optical element in the checking function. While the imported unit will undoubtedly mechanically operate without the optical element, the checking function cannot, or at least there is no proof that it is, completed by the operator without the assistance of the incorporated optical element or a substitute device.

The overall purpose of the imported article, as plaintiff concedes, is to assist the operator in a "checking" function. *Cf. Bruce Duncan Co., Inc.* v. *United States*, 67 Cust. Ct. 430, C.D. 4312 (1971). Whether the lens does or does not meet certain "judicially established criteria", referred to by plaintiff for classification of an optical instrument under tariff acts earlier than TSUS, is not the issue in this case. The issue is whether the imported article is an "optical instrument", *cf. United States* v. *Bliss & Co.*, 6 Ct. Cust. Appls. 433, T.D. 35980 (1915), as defined in TSUS. Plaintiff has not addressed itself to that issue. At the close of plaintiff's case defendant moved to dismiss and ruling was reserved. Defendant did not renew the motion at the close of its own case and has not argued the motion in its brief. The parties now seek a judgment on the merits and consideration of the motion is moot. On the record and argument in this case, I hold that plaintiff has not overcome the presumption that the imported article is an "optical instrument" as defined in TSUS. *Cf. United States* v. *John V. Carr & Son, Inc.*, 61 CCPA 41, C.A.D. 1116, 495 F. 2d 771 (1974).

The imported checking unit concededly incorporates an optical element. Presumptively the optical element is incorporated for a purpose that is not subsidiary to the checking function. Plaintiff's reliance on what the manufacturer's literature does not say is at best of marginal weight to the classification in this case. The literature does not state that the optical lens must be used with the imported unit. Mr. Ziffer's testimony, unreliable in the several respects earlier noted, nevertheless, is to the effect that either the lens or a substitute device must be used for safety reasons and that the purpose of the lens is to protect the operator from flying glass should an ampoule break in the spinning. Moreover, the literature does say that the imported unit offers "a visual control of the contents of the ampoules * * * in order to detect foreign particles."

The action is dismissed.

Judgment will so enter.

DECISIONS OF THE UNITED STATES CUSTOMS COURT

Reappraisements

(R.D. 11777)

VICTOR MANUFACTURING AND GASKET COMPANY *v.* UNITED STATES

Automotive gaskets

REAPPRAISEMENT—EXPORT OR FOREIGN VALUE

Aside from the need to prove the appraised value erroneous, an importer claiming foreign value as the proper basis of appraisement had the burden of demonstrating that its claimed value for the merchandise in question sold in the home market was higher than the export value for such or similar merchandise, or that there was no export value for such or similar merchandise. Since the importer did not meet this burden, the court held that the importer's appeals for reappraisement must be dismissed and the appraised values affirmed.

SAME

The importer's burden of proving the correct dutiable value extends to both export and foreign value is required by section 402a(a)(1) of the Tariff Act of 1930, as amended, which requires a choice between "whichever is higher."

Court Nos. R67/15496, etc.

Port of Chicago

[Judgment for defendant.]

(Decided March 5, 1975)

Baker & McKenzie (*William D. Outman, II*, of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the defendant.

MALETZ, Judge: These 14 consolidated appeals for reappraisement involve the proper dutiable value of various types of automotive gaskets which were manufactured and exported from Denmark by Victor Royal Ltd. Manufacturing & Gasket Company of

Copenhagen, Denmark (Victor Royal) during a period from April 1965 through May 1967 and entered at the port of Chicago. The merchandise was on the so-called Final List, T.D. 54521, and was appraised by the District Director of Customs on the basis of foreign value as defined in section 402a(c) of the Tariff Act of 1930 as amended by the Customs Simplification Act of 1956 (19 U.S.C. § 1402(c)(1964)). The values found by the District Director were equal to Victor Royal's invoice unit prices to plaintiff, plus 84.1 percent, less 3 percent, plus packing. Such advance in values resulted from the disallowance of certain quantity discounts that Victor Royal granted plaintiff.

Plaintiff claims the statutory basis of appraisement is also foreign value but contends that the correct unit values are those which are contained in Victor Royal's price lists covering certain home market sales in Denmark.

Section 402a of the Tariff Act of 1930, 46 Stat. 708, as amended and renumbered by the Customs Simplification Act of 1956, 70 Stat. 943, 946, reads in part as follows:[1]

> (a) BASIS.—For the purposes of this Act the value of imported articles designated by the Secretary of the Treasury as provided for in section 6(a) of the Customs Simplification Act of 1956 shall be—
>
> (1) The foreign value or the export value, whichever is higher;
>
> * * * * * * *
>
> (c) FOREIGN VALUE.—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.
>
> (d) EXPORT VALUE.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to plac-

[1] The Customs Simplification Act of 1956 added a new valuation section to the Tariff Act of 1930 which new section was designated as "Sec. 402. Value." The old valuation section of the Tariff Act of 1930 was redesignated as "Sec. 402a. Value (Alternative)" and continued to apply to the appraisement of all articles specified in the Final List, T.D. 54521. See American Importers Association, *United States Customs Valuation Procedure*, p. 5 (1958); Sturm, *A Manual of Customs Law*, pp. 40–2 (1974).

ing the merchandise in condition, packed ready for shipment to the United States.

Against this background, the principal issue is whether plaintiff has established that its claimed values on the basis of foreign value, as defined in section 402a(c), are correct.

I

We consider first the record which consists of the testimony of two witnesses called by plaintiff and six exhibits introduced by plaintiff. Defendant called no witnesses and introduced no exhibits. The record, it is to be added, is best understood by summarizing the testimony of the two witnesses and the exhibits to which their testimony related.

Plaintiff's first witness was John F. Teigland, staff attorney for the Dana Corporation of Toledo, Ohio, which in August 1966 acquired 100 percent of the stock of the plaintiff-importer, Victor Manufacturing and Gasket Company. Mr. Teigland testified that in April and May 1967 he met with a Mr. Stolpe, an Import Specialist with the Bureau of Customs in Chicago; that Mr. Stolpe told him that the value advance was based on the disallowance of discounts being offered to plaintiff that were not available in the home market, Denmark; and that Mr. Stolpe showed him a Victor Royal price list (identified in the record as Pl. Ex. 1) on which the discounts in question appeared. Subsequent to these meetings, Mr. Teigland prepared a computation (Pl. Ex. 2) explaining the method of arriving at the value advance of 84.1 percent.

Allan Nielsen, Vice President of Victor Royal, was called as plaintiff's second witness. He testified that Victor Royal's principal business was to manufacture and sell gaskets, 60 percent of which were automotive gaskets; that 51 percent of the company's stock was owned by the Harald Nielsen Foundation and 49 percent by plaintiff; and that plaintiff did not maintain an active management position in Victor Royal. He added that he was familiar with Victor Royal's pricing policy; that he was responsible for Victor Royal sales in and outside Denmark; and that its sales were divided about 50–50 between domestic sales in Denmark and export sales.

In Denmark, Mr. Nielsen testified, Victor Royal had two types of customers for automotive gaskets; one type consisted of so-called non-franchised or replacement part wholesalers (hereafter referred to as "replacement part wholesalers"); the other type consisted of the marketing organizations of automobile manufacturers such as the Ford Motor Company and General Motors (which marketing organizations are hereafter referred to as "automobile companies") that marketed the automotive gaskets through their franchised dealers.

According to the witness, there was a distinction in the way Victor Royal sold to these two types of customers in Denmark—the distinction being in quantity and pricing. In this connection, the witness testified that individual sales to automobile companies were made in larger quantities than sales to replacement part wholesalers. Further he stated that automobile companies purchased gaskets from Victor Royal at prices 10 to 20 percent less than the home market prices to replacement part wholesalers, and that in the aggregate, value-wise, Victor Royal's total home market sales of automotive gaskets were divided about equally between sales to replacement part wholesalers and to automobile companies.

Mr. Nielsen testified that in March 1965 he had prepared a price list (Pl. Ex. 1) which was utilized for sales to plaintiff; that this price list set forth (among other things) the discounts allowable on any individual order exceeding 100,000 Danish kroner; that there was no purchaser in Denmark who ever placed an individual order for automotive gaskets in a value exceeding 100,000 kroner; and that although this price list was ostensibly a home market price list for Denmark, it was never used in Denmark because of the size of the discounts involved.

Mr. Nielsen further testified that in July 1964, Victor Royal prepared a price list (Pl. Ex. 3) that was used in connection with sales of automotive gaskets to replacement part wholesalers in Denmark until the 1965 price list was issued.[2] He said that this 1964 price list was controlling in domestic purchases during the period of its validity; that the price list set forth quantity codes identified by the letters "A," "B," or "C"; that the prices at which gaskets were offered for sale varied as to quantities purchased; and that during the period of validity of the 1964 price list the greatest number of individual sales at wholesale were made at quantity level "B" meaning 10 to 24 units.

Mr. Nielsen testified that the 1965 price list (Pl. Ex. 4) was issued September 15, 1965 and that it was used in effecting sales to replacement part wholesalers in Denmark during the period of its validity. Mr. Nielsen stated that the 1965 price list also contained quantity codes identified by the numbers "1," "10," and "50" and explained that the first number meant quantities from 1 to 9, the second meant quantities from 10 to 49, and the third, quantities of 50 and more. During the period of validity of the 1965 price list, Nielsen indicated that the greatest number of sales in the Danish home market were in quantities of 10 to 49 units.

Effective June 15, 1966, Mr. Nielsen testified that Victor Royal issued the next successive price list (Pl. Ex. 5) which was controlling

[2] The 1964, 1965 and 1966 price lists which are discussed in this opinion were not used in Victor Royal's sales to automobile companies in Denmark.

in sales made by Victor Royal to replacement part wholesalers in Denmark during the period of its validity in the same respect as was the case with the previously effective price list.

The price lists (Pl. Exs. 3, 4 and 5) claimed by the plaintiff to be controlling in determining the per unit values of the automotive gaskets here in issue each identify the individual gasket types by Victor Royal part number, correlate the Danish home market sales prices to such part number, and set forth the per unit values in Danish kroner.

Finally, the witness Nielsen testified that Victor Royal offered gaskets to plaintiff at a price lower than it offered them to domestic wholesalers in Denmark; that Victor Royal sold to other companies in the United States besides plaintiff; and that the prices at which Victor Royal sold gaskets for export to the United States were lower than domestic prices in Denmark.

II

Turning now to the legal aspects, it is fundamental that plaintiff has a twofold burden, first to prove the District Director's appraisement erroneous and second to establish the correctness of its claimed values. For the reasons that follow, it must be concluded that plaintiff has failed to establish the correctness of its claimed values and hence the appraised values must be affirmed.

Section 402a(1) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, requires that the dutiable value of imported merchandise on the Final List shall be foreign value or export value, whichever is higher. In regard to valuation under this section, it is of course basic that the District Director's appraisement is presumptively correct. See 28 U.S.C. § 2633 (1964). And it is equally basic that the District Director is presumed to have found every fact necessary to sustain his appraisement. With these considerations in mind, it is apparent that in finding an appraised value for the imported merchandise on the basis of foreign value, it is presumed (1) that the appraised value thus determined by the District Director is correct; and (2) that the District Director found either that the value he deemed to be the correct dutiable value was higher than the export value or that there was no export value. This presumption does not mean, however, that plaintiff, assuming *arguendo* that it is successful in establishing that the appraised foreign value is erroneous, is relieved of the necessity of proving either that its claimed value was higher than export value or that there was no export value. To the contrary, in claiming a foreign value different from the appraised value, plaintiff is required to prove either that its claimed value was higher than the export value for such or similar merchandise, or that no export value for such or similar merchandise

existed at the times of exportation. This is an essential part of plaintiff's affirmative burden of establishing that its claimed value is correct.[3]

This principle was clearly set forth in *United States* v. *Joseph Tanous*, 53 CCPA 129, C.A.D. 889 (1966) where our appellate tribunal pointed out (p. 133) that the basis for the appraised value having been proved erroneous, the importer's "burden of then proving the correct dutiable value extends to both export and foreign value in view of section 402(a)(1) requiring a choice between 'whichever is higher.' "

The appellate court then continued (ibid.):

> The statutory language of sections 402 (a), (c), and (d) of the Tariff Act of 1930, as amended, supra, requires that a determination be made as to the presence or absence of foreign and export value in order to ascertain the dutiable value of imported merchandise. Each value must be determined independently of the other, and each separately considered as to both such or similar merchandise. Once the two values as defined in the statute are determined, or the absence of one of them, the selection of the higher value, or the existent value, is mandatory. *Meadows, Wye & Co.* v. *United States*, 17 CCPA 36, T.D. 43324; *United States*, v. *Irving Massin & Bros.*, 16 Ct. Cust. Appls. 19, T.D. 42714. [Emphasis in original omitted.]

To similar effect is the following excerpt from Sturm, *A Manual of Customs Law* (1974), p. 109:

> Each value [foreign and export] must be determined independently of the other and each separately considered as to both such and similar merchandise. Once the two values are determined, or one is found to be absent, the selection of the higher value, or the existent one, is mandatory. Within the confines of each definition it is necessary to determine first whether there is a value for such merchandise, and, if not, whether there is a value for similar merchandise. *Nichols & Company, Inc.* v. *United States*, 59 CCPA 67, C.A.D. 1041, 454 F. 2d 1183 (1972). The higher foreign

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[3] The following example will help illustrate why the foregoing is so. To start with, it is assumed that the District Director appraised imported merchandise on the basis of foreign value at $25.00 per unit. It follows from this that not only is $25.00 presumed to be the correct dutiable value, it is also presumed, since foreign value was the basis of appraisement, that the $25.00 appraised value either was higher than the export value or that there was no export value. It is next assumed that plaintiff claims that foreign value is the proper basis of appraisement but that the correct dutiable value on that basis is $15.00 per unit. In this circumstance, it is manifest that the District Director's appraisement at *$25.00* per unit does not give rise to any presumption that the *$15.00* per unit claimed value either was higher than the export value or that there was no export value. Rather, it is part of plaintiff's affirmative burden to establish that its $15.00 per unit claimed value is correct.

On a related matter, plaintiff indicates in its brief (p. 12) that since the parties agree that the merchandise in issue is included on the Final List, it follows that foreign value is the proper basis of appraisement. This, however, is quite incorrect. For the fact that merchandise is on the Final List means only that the *old* valuation section of the Tariff Act of 1930 will continue to apply to the appraisement of that merchandise and under that section either foreign value or export value, whichever is higher (or in the appropriate case, United States value, cost of production, or American selling price), is the proper basis of appraisement. See note 1, *supra*.

or export value, whether for such or similar merchandise prevails. *United States* v. *Joseph Tanous*, 53 CCPA 129, 133, C.A.D. 889 (1966).

As applied to the present case, it must be concluded that plaintiff has not satisfied the statutory requirements of demonstrating that its claimed foreign value for such merchandise sold in the home market was higher than the export value for such or similar merchandise, or that there was no export value for such or similar merchandise. It is clear that no evidence has been offered by plaintiff which would tend to establish that an export value for such or similar merchandise did not exist. Remaining then is the question of whether plaintiff has shown an export value for such or similar merchandise which was lower than its claimed foreign value. This plaintiff has failed to do.

In connection with the foregoing, the only proof offered by plaintiff regarding export value is the statement by the witness Nielsen that Victor Royal, the Danish exporter, sold *such* merchandise to the plaintiff and other purchasers for exportation to the United States at prices lower than the prices for home consumption in Denmark (R. 96–99). The weight to be given this evidence must be "assessed in practical terms, considering such factors as completeness, adequacy of bases, and possible motives to deceive." *Mannesmann-Meer, Inc.* v. *United States*, 58 CCPA 6, 8, C.A.D. 995, 433 F. 2d 829, 831 (1970). Measured by this standard, it must be concluded that the foregoing testimony is entitled to little weight. For there is a complete absence from the record of any specific transaction between Victor Royal and a purchaser in the United States, other than plaintiff. Likewise absent from the record is any evidence of what price or prices Victor Royal charged such a purchaser. In light of these considerations, the statement by plaintiff's witness that the prices for export were lower than those in the home market without evidence of specific transactions or prices cannot be a basis for the court's concluding that the export prices for such merchandise were lower.

What is more, the record is totally devoid of any evidence to establish whether an export value existed for such merchandise at the so-called lower price, i.e., that such merchandise was freely offered to all purchasers in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States at prices lower than home market prices. Accordingly, plaintiff has not proved either that the export value was lower than the claimed foreign value for such merchandise or that there was absent an export value for such merchandise.

Further, with respect to similar merchandise manufactured either by the present exporter or other manufacturers in Denmark, there is

no evidence whatsoever to show either that there was no export value for similar merchandise, or that the prices for similar merchandise for exportation to the United States were lower than the claimed value which is based on foreign value.

In sum, the court, without considering whether or not the appraised values are correct, concludes that plaintiff has failed to prove that its claimed values are correct. Hence the appeals for reappraisement must be dismissed and the appraised values affirmed. Judgment will be entered accordingly.

(A.R.D. 322)

ERNEST LOWENSTEIN, INC. *v.* UNITED STATES

Order

Application for Review of Reappraisement Decision 11776

Court No. R64/2246 on beads

Port of New York

Second Division, Appellate Term

[Remanded.]

(Dated April 3, 1975)

Siegel, Mandell & Davidson (*Steven S. Weiser* and *Harvey A. Isaacs* of counsel) for the appellant.

Irving Jaffe, Acting Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the appellee.

Before FORD, WATSON, and NEWMAN, Judges

Upon the record as made herein and in view of the decision in *J. L. Wood* v. *United States*, 62 CCPA25, C.A.D. 1139 (1974), the court *sua sponte*

ORDERS the matter remanded to the trial court for all purposes.

DECISIONS OF THE UNITED STATES CUSTOMS COURT

Rules

(C.R.D. 75–1)

F. W. MYERS & CO., INC. *v.* UNITED STATES

Opinion on Motion for Discovery

Court No. 72–3–00710

[Motion granted in part and denied in part.]

(Dated February 7, 1975)

Covington & Burling (*Rodney E. Gould* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*John N. Politis* and *Andrew P. Vance*, trial attorneys), for the defendant.

RICHARDSON, Judge: The merchandise involved in this case, Atomet 28, was classified under item 608.05, TSUS, as iron powder, at the rate of duty of 0.3¢ per pound. The plaintiff, agent of the importer, Quebec Metal Powders Limited of Tracy, Canada, and consignee of the merchandise, claims classification should be under item 608.02, TSUS, as sponge iron powder, at the rate of duty of 37¢ per ton in 1969 and 25¢ per ton in 1970.

Plaintiff moved to compel discovery, requesting the defendant to produce (1) all laboratory reports extending back to and prior to 1970 on ferrous powders; (2) the work sheets which explain the tests and analyses done in order to produce the laboratory reports; (3) C.I.E. rulings; without the deletions of the names of the manufacturers (where known to the government), the names of the importers and the trade names of the imported merchandise (where known to the government).

At the oral argument on the motion, the plaintiff limited its request to 218 laboratory reports extending back only to 1970; and six customs rulings and letters. The government agreed (1) to furnish plaintiff with the 218 laboratory reports extending back to 1970 for the seven

powders produced by Quebec Metal Powders, the manufacturer for whom, the plaintiff, F. W. Myers & Co., Inc. is an agent, and all the powders imported by its competitors, during said period; (2) to furnish the worksheets which explain the tests and analyses done in order to produce the laboratory reports; (3) to correlate each laboratory report with each entry and show how the merchandise was classified and liquidated; and (4) to furnish six customs rulings and letters.

The residual issue for the court to rule upon is whether the defendant should be compelled to furnish the names of the producers, importers and trade names of those imported metal powders other than the metal powders before the court.

The importer contends that the information sought contains no pricing data, no customer lists, no secret manufacturing process, no future business plans and should not be shielded behind a wall of confidentiality.

The government resists the plaintiff's remaining request for information, contending that it does not keep records of trade names, and the names of the other producers and importers were given to it in confidence, and for competitive reasons should not be divulged, under 19 C.F.R. 103.10 exempting privileged and confidential documents from disclosure; and Rule 6.1(b)(1) of the Rules of the Customs Court which also excludes "privileged" information from disclosure, and Rule 14.3(b)(1) which limits the availability of laboratory reports "only to the attorney of record or a party to the action."

In discovery proceedings, discovery is limited to a party's needs in prosecuting or defending against a claim. It appears to the court that the disclosure of the laboratory reports with the names of the importers and manufacturers excised; the work sheets which explain the tests and analyses done in order to produce the laboratory reports; and a correlation of each laboratory report with each entry, showing how the merchandise was classified and liquidated, is sufficient disclosure to enable the plaintiff to prosecute its claim. In addition, to order that the excised names of importers and manufacturers and trade names (where known to the government) be disclosed would force the government to breach its obligation to hold in confidence commercial information which should not be disclosed for competitive reasons. Also, the plaintiff has not shown that it has a proper or legal interest in the residual disclosure it seeks.

An order will be entered directing disclosure of documents in accordance with the stipulation of the parties at the oral argument on the motion for discovery, and the names of the importers and manufacturers and trade names (where known to the government) shall be excised from said documents.

(C.R.D. 75-2)

L. B. WATSON CO., A/C MURPHY REIR, INC. *v.* UNITED STATES

On Plaintiff's Motion for Summary Judgment

Court No. 67/9660

Toys—inflatable vinyl reindeer and Santa Claus figures and sets

Port of Los Angeles

[Motion denied.]

(Dated April 7, 1975)

Stein and Shostak (*James F. O'Hara* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

MALETZ, Judge: This case which comes before the court on plaintiff's motion for summary judgment involves the dutiable status of articles described on the invoices as VNC 200 (Randy Reindeer), VNC 301 (Standing Santa 24"), and MR 33 (26" Roly Poly Santa). The articles which were imported from Japan and entered at the port of Los Angeles were classified by the district director of customs under item 737.40 of the Tariff Schedules of the United States as other toy figures of animate objects (except dolls), not having a spring mechanism, not stuffed, and not wholly or almost wholly of metal, and assessed with duty at the rate of 35 percent.

Plaintiff claims that the importations are properly classifiable under item 772.97 as other Christmas ornaments of rubber or plastics and thus dutiable at the rate of 17 percent.

In support of its claim, plaintiff contends that the merchandise here in issue is similar in all material respects to the merchandise in issue in *Davis Products, Inc., Frank M. Chichester* v. *United States*, 59 Cust. Ct. 226, C.D. 3127 (1967). In that case, certain inflatable vinyl reindeer and Santa Claus sets were classified by the government under paragraph 1513 of the Tariff Act of 1930, as modified, as other toys not specially provided for, and assessed with duty at the rate of 35 percent. The court held, however, that as claimed by plaintiffs, the importations were primarily marketed, sold and used as articles of Christmas display and not as toys, and were therefore properly classifiable by similitude to manufactures of rubber under paragraph 1537(b) of the 1930 Tariff Act, as modified, and thus dutiable at the rate of 12½ percent.

Against this background, the single issue with respect to the pending motion is whether or not the imported articles involved in the present

case are similar in all material respects to the inflatable vinyl reindeer and Santa Claus sets involved in the *Davis* case. As to this, it is to be noted that a sample of the importations here in question has not been offered. However, plaintiff insists that the affidavit of one Sidney L. Friedlander establishes the necessary similarity; that in this circumstance, no genuine issue of material fact remains for trial; and that accordingly, motion for summary judgment should be granted.

To the extent relevant, Friedlander's affidavit is to the following effect:

1. That he is the same Sidney L. Friedlander who testified in the *Davis* case, *supra;*
2. That he is personally familiar with the Christmas inflatable articles selected, purchased and sold by Davis Products, and that he is likewise familiar with the articles involved in the present case;
3. That the articles at issue in this case "are similar in construction and use to the items previously imported by Davis Products, Inc." which were before the court in the *Davis* case.

Considering now the applicable legal principles, while it is not necessary for plaintiff to offer a sample of the imported merchandise, it must, however, present adequate evidence to establish the nature and essential characteristics of the importation. *New York Merchandise Co., Inc.* v. *United States*, 66 Cust. Ct. 69, C.D. 4169 (1971); *W. T. Grant Co.* v. *United States*, 74 Cust. Ct.3, C.D. 4579 (1975). On this aspect, plaintiff relies upon the statement in the Friedlander affidavit that the articles in issue in this case "are similar in construction and use to the items previously imported by Davis Products, Inc. * * *." This statement, however, provides no factual information which would enable the court to determine the essential characteristics of the imported merchandise. Simply stated, plaintiff has provided no information concerning the particular qualities of the importations which are necessary for determination of this action. In sum, the court is totally uninformed about the imported merchandise lacking as it does such necessary information as the appearance and expression of the figures, the existence or non-existence of fastening tabs, the gauge of the vinyl, etc. See *Davis Products, Inc., Frank M. Chichester* v. *United States, supra*, 59 Cust. Ct. at 228–9; *New York Merchandise Co., Inc.* v. *United States, supra*, 66 Cust. Ct. at 74–7.

For the foregoing reasons, plaintiff's motion for summary judgment is hereby denied.

(C.R.D. 75-3)

NADEL & SONS TOY CORP. *v.* UNITED STATES

Memorandum Opinion and Order

Court Nos. 73-3-00675, etc.

(Dated June 24, 1975)

Serko & Sklaroff (*David Serko, Joel Simon* and *Murray Sklaroff* of counsel) attorneys of record for plantiff.

Mandel & Grunfeld (*Irving A. Mandel* of counsel) incoming attorneys.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance* and *Saul Davis*, trial attorneys), for the defendant.

BOE, Chief Judge: On May 6, 1975, pursuant to a motion filed with this court, an order was made and entered substituting the law firm of Mandel & Grunfeld as attorney for the plaintiff in the above-entitled action and all other actions in plaintiff's name pending before this court in which the former law firm of Serko & Sklaroff appears as attorney of record. The order aforereferred to further provides that all matters relating to just and reasonable compensation for legal services rendered prior to substitution by the law firm of Serko & Sklaroff, unless otherwise mutually agreed upon, should be determined by this court at a subsequent hearing.

At a hearing on May 27, 1975, respective counsel presented arguments to this court with respect to the matter of compensation and have submitted memoranda and some documents relating thereto.

The sole question for determination in this proceeding, therefore, is the fair and reasonable value of the legal services, if any, which may have been performed by the former firm of Serko & Sklaroff during such period of time as it represented the plaintiff in those cases presently pending before the United States Customs Court. This court cannot refrain from expressing its disappointment in the failure or unwillingness of the respective counsel to adequately present such facts, records and information as would permit a true evaluation and determination of the amount and nature of the work and services performed by the former law firm of Serko & Sklaroff as well as the extent and nature of the legal services and work remaining to be performed in connection with said cases by the law firm of Mandel & Grunfeld.

From the evidence and statements presented to this court, it appears that since the year 1967, through and including the year 1974, the former law firm of Serko & Sklaroff has been paid by the plaintiff annual retainer fees in the total sum of $9,850. During this period of

time said firm was further paid by the plaintiff contingent fees with respect to services performed in the total sum of $2,488.56.

Mr. Irving A. Mandel of Mandel & Grunfeld contends that the payments aforereferred to by the plaintiff to the former law firm of Serko & Sklaroff should be considered as payment in full for any and all services performed by the former law firm of Serko & Sklaroff, including the specific legal services in connection with the cases of the plaintiff presently pending before this court and in which the firm of Mandel & Grunfeld has now been substituted as attorney.

It is submitted, however, by counsel for the former law firm of Serko & Sklaroff that the annual retainer fees aforementioned as well as the total contingent fees previously received represented payment for services other than in connection with the cases of the plaintiff presently pending before this court and in which substitution of attorney has been made. It is further contended, and uncontroverted, that the litigation and prosecution of cases in court should be compensated on a contingent fee basis in a sum equivalent to 33⅓% of the recovery obtained. With respect to those certain cases of the plaintiff pending before this court relating to the 10% surcharge imposed by Presidential Proclamation 4074, compensation was to be determined on a contingent fee basis in a sum equivalent to 15% of the total recovery, if any.

Letters under date of February 1, 1967 and October 22, 1971, written by Mr. David Serko to the plaintiff, copies of which were submitted in these proceedings, appear to confirm these contentions. It is stated in the letter of February 1, 1967:

> * * * The retainer services which we had discussed would cover information, advice, counsel, whether telephonic, written or personal, and will also embrace personal visits with appropriate Government officials for the purpose of enabling us to render such advice and counsel.
>
> As part of our retainer services, we would examine your import transactions both at the Custom House and internally at your offices, and would also examine the items of merchandise which you are presently importing and contemplate importing, with a view to obtaining the best possible rate and value for duty purposes.

The letter further specifically provides:

> Generally, the retainer will exclude litigation and special matters requiring affirmative action on our part, either locally or in Washington, wherein the nature of our services would be beyond the advisory scope. These special matters would be discussed as the situations arose, and the manner and amount of compensation would generally be determined at such time. Contingent fees would be one of the methods of compensation where reasonable and applicable.

In the further letter written by David Serko to the plaintiff, under date of October 22, 1971 and submitted in these proceedings, it appears that in those certain cases of the plaintiff pending before this court relating to the imposition of the surcharge pursuant to Presidential Proclamation 4074, a contingent fee in the sum equivalent to 15% of the recovery was agreed upon.

In view of the foregoing, it is clear that the annual retainer fees paid to the former law firm of Serko & Sklaroff cannot be considered as compensation in connection with any of the cases presently pending before this court and that such retainer fees necessarily represented compensation for advice, consultation and special services of the character referred to in the letter under date of February 1, 1967, aforereferred to. It is not for this court to exercise its judgment as to whether the advice, counsel or other services performed by the former law firm of Serko & Sklaroff warranted or justified the amount of the retainer fee paid by the plaintiff in any particular year. It is only for this court to determine from the record and the meager evidence submitted in connection therewith the just and reasonable compensation for the services performed by the former law firm of Serko & Sklaroff in connection with the cases presently pending before this court and in which the firm of Mandel & Grunfeld now has been substituted.

Upon interrogation by the court as to the extent and nature of the services performed by the former law firm of Serko & Sklaroff in connection with the cases of the plaintiff pending before this court, Mr. Joel Simon, one of the counsel for said law firm, stated that 387 protests, 30 summonses and 120 complaints had been filed in connection therewith. Neither a description of the cases, nor the issues involved nor the extent of any additional services performed could be acquired or "extracted" from counsel. It is disturbing to this court to note the apparent unfamiliarity on the part of the former law firm of Serko & Sklaroff and present counsel with respect to the *cases in issue* and their inability to testify and submit evidence as to the extent of the specific services performed by this firm in behalf of the plaintiff with respect thereto during the periods of time in question.

This court is aware that in many instances because of similarity duplicate protests as well as duplicate complaints may be prepared and filed. Such services are in essence clerical acts not requiring any degree of legal knowledge and expertise. In the absence, therefore, of any specific evidence with respect to the nature, value and extent of the services performed by the former law firm of Serko & Sklaroff in connection with preparation and filing of the protests, summonses and

complaints, this court is not inclined to indulge in such speculation as to provide by this order an undeserved gratuity.

Accordingly, recognizing that contingent fees had been agreed upon between the plaintiff and the former law firm of Serko & Sklaroff with respect to cases of the nature which are presently before this court, it is hereby

ORDERED that the plaintiff pay to the former law firm of Serko & Sklaroff or its duly authorized representative as just and reasonable compensation for legal services rendered in connection with the preparation and filing of protests, summonses and complaints in those certain cases designated as NADEL & SONS TOY CORP., Plaintiff, v. THE UNITED STATES, Defendant, Court No. 73-3-00675 and the various other cases pending before this court in which the law firm of Mandel & Grunfeld has been substituted as attorney, pursuant to the prior order of this court under date of May 6, 1975, a contingent fee and/or fees in an amount as hereinafter directed:

(1) In all such cases relating solely to the imposition of the surcharge pursuant to Presidential Proclamation 4074 the sum equivalent to 3% of the total recovery, if any, notwithstanding the prior contingent fee agreement between the plaintiff and the former law firm of Serko & Sklaroff to the contrary.

(2) In all other cases the sum equivalent to 6% of the total recovery, if any, notwithstanding the prior contingent fee agreement between the plaintiff and the former law firm of Serko & Sklaroff to the contrary.

and it is further

ORDERED that the plaintiff, upon receipt of any recovery and payments from the Treasury Department of the United States in connection with the cases which are the subject of the instant order, shall forthwith pay said sum and/or sums to the former law firm of Serko & Sklaroff or its duly authorized representative. That the former law firm of Serko & Sklaroff shall have a lien upon the proceeds of such recoveries until the contingent fees in the amount as aforesaid are fully paid, and it is further

ORDERED that this court shall retain jurisdiction over the subject matter and the parties in the within proceedings until all the conditions herein set forth have been fully complied with.

ABSTRACTS OF CUSTOMS COURT DECISIONS

Protests

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/1	Watson, J. January 7, 1975	American Honda Motor Co., Inc.	67/52903	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles Contact breakers or breaker assemblies
P75/2	Re, J. January 7, 1975	Border Brokerage Co., Inc.	72-8-01781	Item 774.60 10% (items marked "A" and "B") Item 678.50 6% (items marked "C") Item 657.40 11% (items marked "D")	Item 666.00 Free entry (items marked "A", "B", "C" and "D")	U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058) (items marked "A") Agreed statement of facts (items marked "B", "C" and "D")	Blaine (Seattle) Plastic planting bullets (items marked "A"), trays (items marked "B"), planting guns (items marked "C"), and backpacks (items marked "D") dedicated to use with plastic planting bullets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/3	Boe, C.J. January 9, 1975	Victor B. Handal & Bro., Inc.	69/51241, etc.	Item 380.84 25¢ per lb. plus 27.5%	Item 376.56 24.5%	A. N. Deringer, Inc. v. U.S. (C.D. 4218)	New York Men's and boys' waterproof jackets
P75/4	Ford, J. January 9, 1975	Z & T Importing Co., Inc.	68/36556, etc.	Item 684.70 15% or 13%	Item 685.22 or 685.25 12.5% or 11%	U.S. v. General Electric Company (C.A.D. 1021)	New York Earphones
P75/5	Richardson, J. January 9, 1975	George S. Bush	68/18043	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate specific or compound rate of duty as set forth in column of said schedule headed "Claimed Rate" the specific rate or specific portion of the compound rate being applied once	Import Associates of America et al. v. U.S. (C.A.D. 961)	Seattle Flatware sets

					against each tool, knife, fork, spoon or other utensil in the set		
P75/6	Richardson, J. January 9 1975	General Electric Co.	72-8-01854	Item 684.70 12%, 10% or 9%	Item 685.25 10%, 8.5% or 7%	Agreed statement of facts	Seattle Earphones (not headphones) of a type chiefly used with radios
P75/7	Richardson, J. January 9, 1975	McHutchinson & Co., Inc.	69/15899	Item 222.60 23%	Item 666.00 Free of duty	Agreed statement of facts	New York Bamboo stakes or bamboo cane stakes; horticultural implements
P75/8	Landis, J. January 9, 1975	Bruce Duncan Co., Inc., Western Automotive Warehouse Distrib.	70/23603	Item 653.39 19%	Item 683.65 6.5%	Warshawsky & Company v. U.S. (C.D. 4410)	Los Angeles Electric lighting equipment (fog lamps)
P75/9	Newman, J. January 9, 1975	Fedtro, Inc.	73-7-02103	Item 682.60 10%, 9% and 7.5%	Item 688.40 8%, 6.5% and 5.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/10	Boe, C. J. January 13, 1975	Victor B. Handal & Bro., Inc.	69/30390, etc.	Item 380.84 25¢ per lb. plus 27.5%	Item 376.56 27% or 24.5%	A. N. Deringer, Inc. v. U.S. (C.D. 4218)	New York Men's and boys' water proof jackets
P75/11	Boe, C. J. January 13, 1975	Victor B. Handal & Bro., Inc.	70/23100, etc.	Item 380.84 25¢ per lb. plus 27.5%	Item 376.56 24.5% or 21.5%	A. N. Deringer, Inc. v. U.S. (C.D. 4218)	New York Men's and boys' waterproof jackets

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/12	Richardson, J. January 13, 1975	General Instrument Corporation	73-10-02873, etc.	Item 685.20 6% without allowance under item 807.00	Items 685.20/807.00 6%; cost or value of U.S. components (items marked "L" on commercial invoices) deductible from full value of imported lateral purity devices	Agreed statement of facts	New York American goods returned (lateral purity devices)
P75/13	Newman, J. January 13, 1975	Fedtro, Inc.	71-6-00197, etc.	Item 682.60 15%, 10%, 9% and 7.5%	Item 688.40 11.5%, 8%, 6.5% and 5.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/14	Newman, J. January 13, 1975	Fedtro, Inc.	74-4-01051, etc.	Item 682.60 10%, 9% and 7.5%	Item 688.40 8%, 6.5% and 5.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/15	Re, J. January 13, 1975	Pacific Wood Products Co.	70/11852	Item 737.40 13.5%	Item 202.53 3%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	San Francisco Drawer sides and backs or lumber

P75/16	Richardson, J. January 15, 1975	Mitsubishi International Corp.	74-1-00270	Item 694.60 6.5%	Item 800.00 Free of duty	Agreed statement of facts	New York American goods returned (aircraft parts)
P75/17	Richardson, J. January 15, 1975	United China & Glass Co.	69/5389, etc.	Item 653.39 19%	Item 688.40 10%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Philadelphia Electric bird cages, etc.
P75/18	Re, J. January 15, 1975	Cheltenham Supply Corp.	69/46485	Item 774.60 13.5% Item 771.30 18%	Item 771.15 2%	Judgment on the pleadings	Philadelphia Scrap, substandard cellophane, reject or scrap cellophane, or substandard cellulose film
P75/19	Re, J. January 15, 1975	Mitsui & Co. (USA), Inc.	70/59756	Item 653.40 19% Item 685.22 12.5% Items 720.14/ 807.00 59.3%	Merchandise dutiable as entirety under item 688.40 at 11.5% subject to constructive separation of entire clock movement (and dial) with assessment upon full value of clock movement and dial under item 720.14 less duty allowance for American made components item (807.00) at 59.3%	Judgment on the pleadings	New York Clock/lamp/radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/20	Ford, J. January 16, 1975	Selectron International Corp.	67/51892, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios
P75/21	Richardson, J. January 16, 1975	General Instrument Corporation	70/12819, etc.	Item 685.20 10% or 8% without allowance under item 807.00	Item 685.20/807.00 10% or 8%; cost or value of U.S. components (items marked "K") deductible from full value of imported merchandise	General Instrument Corporation v. U.S. (C.D. 4507)	New York American goods returned (flybacks (horizontal output transformers))
P75/22	Richardson, J. January 16, 1975	Globe Importing Co.	70/58281	Item 613.18 0.8¢ per lb. plus 10.5%	Item 654.00 7%	Agreed statement of facts	New York Shower heads (sanitary wares of brass)
P75/23	Richardson, J. January 16, 1975	Ross Electronics, Inc., et al.	67/80694, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/24	Richardson, J. January 16, 1975	R. J. Saunders & Co., Inc.	67/80143, etc.	Items 684.70 15%	Item 685.40 11.5%	Agreed statements of facts	New York Articles solely or chiefly used as parts of dictation recording machines

P75/25	Maletz, J. January 16, 1975	C. Itoh & Co. (America), Inc.	67/30050	Item 771.55 20%	Item 771.42 12.5%	Sekisui Products, Inc. v. U.S. (C.D. 3385)	New York P.V.C. sheets, etc.
P75/26	Newman, J. January 16, 1975	Hancock Gross, Inc.	69/44616	Item 657.80 15%	Item 654.20 13.5%	Agreed statement of facts	Philadelphia Shower heads (sanitary wares or parts, of zinc)
P75/27	Ford, J. January 20, 1975	Amerisam Co., Inc., et al.	73-1-00030, etc.	Item 684.70 12%, 10% or 9% Item 685.23 10.4%	Item 685.25 10%, 8.5%, 7% or 6%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones
P75/28	Ford, J. January 20, 1975	Kaysons Industrial, Ltd.	67/54855	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	San Francisco Earphones
P75/29	Ford, J. January 20, 1975	Lafayette Electronics Intl., Inc., et al.	66/47197, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/30	Ford, J. January 20, 1975	Lynn Stewart Company	68/68166, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones
P75/31	Ford, J. January 20, 1975	Oriental Exporters, Inc., et al.	67/30295, etc.	Par. 353 15%	Par. 353 13.75%	Midland International Corporation v. U.S. (C.D. 3217) North American Foreign Trading Corp. v. U.S. (C.D. 3968)	New York Earphones

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/32	Ford, J. January 20, 1975	Karl Schroff & Assocs., Inc., et al.	67/35822, etc.	Item 706.08 or 791.65 20%	Item 685.22 12.5%	Agreed statement of facts	New York Cases imported with, and used as containers for, radios with which imported
P75/33	Watson, J. January 20, 1975	The American Import Co.	70/22006	Item 748.20 25%	Item 774.60 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/34	Watson, J. January 20, 1975	Pacific Coast Commercial, Inc.	69/16482, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic

P75/35	Ford, J. January 22, 1975	American Sanitary Rag Co. et al.	68/20705, etc.	Item 684.70 15%,13%or12%	Item 685.22 12.5% Item 685.25 11% or 10%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/36	Ford, J. January 22, 1975	Amerisam Co., Inc.	70/30641, etc.	Item 684.70 12%	Item 685.25 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones
P75/37	Ford, J. January 22, 1975	Hitachi Sales Corp. of America	72-6-01439	Item 684.70 9%	Item 685.25 7%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Radio earphones
P75/38	Ford, J. January 22, 1975	Lynn Stewart Company et al.	67/41717, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/39	Landis, J. January 22, 1975	Durst Industries, Inc.	66/41758, etc.	Item 675.20 19% or 17% Item 657.35 1¢ per lb. plus 13.5%	Item 653.95 17% or 15% Item 654.00 9%	Agreed statement of facts	New York Sanitary wares, or parts thereof, in c.v. of metal
P75/40	Landis, J. January 22, 1975	Hancock Gross, Inc.	67/79695, etc.	Item 657.20 19%	Item 653.95 17%	Agreed statement of facts	Philadelphia Sanitary wares, or parts thereof, in c.v. of iron or steel

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/41	Watson, J. January 22, 1975	A.A. Importing, Inc., et al.	69/24385, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc., v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/42	Watson, J. January 22, 1975	International Artware Corporation	69/49009, etc.	Item 748.20 26.5%, 25% and 23.5%	Item 774.60 15%, 13.5% and 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P75/43	Watson, J. January 22, 1975	Lighty Manufacturing Co. et al.	70/63007, etc.	Item 748.20 26.5% or 23.5%	Item 774.60 15% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic

P75/44	Watson, J. January 22, 1975	Pacific Coast Commercial, Inc.	70/5498, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/45	Newman, J. January 22, 1975	Knickerbocker Liquors Corp.	72-11-02254	Duty assessed on 12081 cartons of Scotch whiskey although 14 cartons were reported manifested, not found	Claim for allowance on 14 cartons reported "manifested, not found" granted; regional commissioner ordered to reliquidate entry accordingly	Judgment on the pleadings	New York Shortage (14 cartons of Scotch whiskey)
P75/46	Re, J. January 22, 1975	Border Brokerage Company, Inc.	72-7-01668	Item 774.60 or 770.30 11.5%, 10% or 8.5%	Item 666.00 Free entry	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) "Reforestation transplant units" and "styro-blocks"
P75/47	Re, J. January 22, 1975	Border Brokerage Co., Inc.	72-9-01895	Item 770.30 10% Item 774.60 8.5%	Item 666.00 Free of duty	Judgment on the pleadings	Blaine (Seattle) Expanded plastic seed planters and plastic planting trays
P75/48	Ford, J. January 28, 1975	J. E. Bernard & Co., Inc., et al.	70/41553, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/49	Ford, J. January 28, 1975	Import Assoc. of America et al.	68/60688, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones
P75/50	Watson, J. January 28, 1975	Baruch Petranker Import Co.	67/23131, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A") Item 774.60 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")
P75/51	Watson, J. January 28, 1975	James A. Cole Co., Inc.	68/23169, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

P75/52	Watson, J. January 28, 1975	Edgar Moser, Inc., et al.	68/50237, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A") Item 772.97 17%, 15%, 13.5% or 11.5% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B")	New York Artificial flowers, etc. (items marked "A") Mistletoe and holly floral arrangements (items marked "B")
P75/53	Watson, J. January 28, 1975	Pacific Coast Commercial, Inc.	69/46677, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/54	Watson, J. January 28, 1975	W. N. Proctor Co.	67/36014	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Boston Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/55	Boe, C.J. January 29, 1975	Jayme Products, Inc.	73-7-02116	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Los Angeles Plastic bags in various sizes, having wide openings and handles with no closure on top
P75/56	Ford, J. January 29, 1975	Lynn Stewart Company et al.	69/53731, etc.	Item 685.22 15% Item 684.70 13%	Item 685.22 12.5% Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones
P75/57	Richardson, J January 29, 1975	Durst Industries, Inc.	68/39177	Item 657.20 19% or 17% Item 657.35 1¢ per lb. plus 13.5%	Item 653.95 17% or 15% Item 654.00 9%	Agreed statement of facts	New York Sanitary wares or parts thereof in c.v. of base metal
P75/58	Richardson, J. January 29, 1975	Ross Products, Inc.	65/2701, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Francisco Electric bird cages, etc.
P75/59	Watson, J. January 29, 1975	F. P. Dow	68/55083, etc.	Item 748.20 28% or 26.5%	Item 774.60 17%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Articles of plastics

P75/60	Watson, J. January 29, 1975	E. Fomil & Sons	67/41515, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc.
P75/61	Watson, J. January 29, 1975	Queen City Wreath Co.	73-1-00287, etc.	Item 748.20 23.5%, 22% and 21%	Item 774.60 11.5%, 10% and 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Cincinnati (Cleveland) Artificial ferns, etc.
P75/62	Richardson, J. February 5, 1975	Huyck Felt Co. et al.	68/49697, etc.	Item 358.30 15% plus 37.5¢ per lb., 13% plus 37.5¢ per lb. Item 358.09 28½% or 25½% Without allowance under item 807.00	Item 807.00 Upon full value of imported article (needled papermakers' felts) less cost or value of American base fabric component of such article	E. Dillingham, Inc. v. U.S. (C.A.D. 1078)	Alexandria Bay (Ogdensburg) American goods returned (needled papermaker's felts)
P75/63	Richardson, J. February 10, 1975	D. C. Andrews International, Inc.	73-6-01596	Item 790.30 6%	Item 666.00 Free of duty	Agreed statement of facts	San Francisco Chin-ball marking devices which do not perform any of the traditional functions of harness; agricultural implements
P75/64	Richardson, J. February 10, 1975	Gosho TradingCo. et al.	69/32225, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/65	Richardson, J. February 10, 1975	Import Assoc. of America et al.	69/53740, etc.	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/66	Richardson, J. February 10, 1975	Jimlar Corporation	74-1-00178	Item 700.60 20%	Item 700.55 6%	Agreed statement of facts	Los Angeles Footwear, other than protective footwear
P75/67	Landis, J. February 10, 1975	Hancock Gross, Inc.	70/2639	Item 657.80 15%	Item 654.20 13.5%	The Westbrass Company v. U.S. (C.D. 4293)	Philadelphia Shower heads
P75/68	Maletz, J. February 10, 1975	Creative Playthings, Inc.	68/46874	Item 737.90 31%	Item 737.55 18.5%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P75/69	Newman, J. February 10, 1975	Candle Enterprises, Inc.	63/20180	Par. 1531 or 1531/1559(a) 20%	Merchandise not appraised according to law; protest premature and dismissed; entry returned to district director for appraisement and liquidation consistent with law	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Cases imported with radios (entireties)

P75/70	Ford, J. February 11, 1975	Dejur Amsco Corp.	67/29878, etc.	Item 684.70 15% (items marked "A") Item 684.70 15% and 13% (items marked "B" and "C")	Item 685.40 11.5% or 10% (items marked "A", "B" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A" and "B") Agreed statement of facts (items marked "C")	New York Earphones (items marked "A") Extensions solely or chiefly used as other parts of earphones(items marked "B") Articles solely or chiefly used as parts of dictation recording machines (items marked "C")
P75/71	Watson, J. February 11, 1975	S. Berger Import & Mfg. Corp.	67/22896-S, etc.	Item 748.20 26.5%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4306)	New York Artificial ferns, etc.
P75/72	Ford, J. February 12, 1975	Ross Electronics Corp. Div. of Interphoto et al.	72-10-02085, etc.	Item 684.70 13%, 12%, 10%, 9% or 7.5% Item 685.25 10.4%	Item 685.25 11%, 10%, 8.5%, 7% or 6%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/73	Ford, J. February 12, 1975	Sanyo Electric, Inc., et al.	67/31837, etc.	Item 684.70 or 685.50 15%	Item 685.22 12.5%	Judgment on the pleadings	San Francisco Earphones
P75/74	Watson, J. February 12, 1975	North Hollywood Mfg. Co.	69/10712, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4306) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A" and "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/75	Watson, J. February 12, 1975	Rice Bayersdorfer Co.	67/6352, etc.	Item 748.20 26.5%, 25% or 23.5% (items marked "A") Item 748.20 28%, 26.5% or 25% (items marked "B")	Item 774.60 15%, 13.5% or 11.5% (items marked "A") Item 772.97 17%, 15% or 13.5% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3270); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B")	Philadelphia Artificial flowers, etc. (items marked "A") Mistletoe and holly floral arrangements (items marked "B")
P75/76	Re, J. February 12, 1975	Border Brokerage Co., Inc., a/c Columbia Plastics	72-10-02101	Item 774.60 8.5%	Item 666.00 Free of duty	Judgment on the pleadings U.S. v. Border Brokerage Company, Inc. (C.A.D. 1058)	Blaine (Seattle) Plastic planting bullets
P75/77	Ford, J. February 13, 1975	Andrew Fisher Cycle Co., Inc.	74-8-02271	Item 732.36 15%	Item 646.56 0.1¢ per lb.	Agreed statement of facts	New York Nuts, of iron or steel
P75/78	Ford, J. February 13, 1975	International Mercantile Corp.	71-9-01016	Item 203.30 13.9¢ per lb. plus 11%	Item 206.97 11.5%	Agreed statement of facts	San Diego Salad bowls, etc., of wood
P75/79	Ford, J. February 19, 1975	Fanon Electronics Industries, Inc.	67/36166	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Los Angeles Earphones (not headphones) of a type chiefly used with radios

P75/80	Ford, J. February 19, 1975	Mill Engineering & Machinery Co.	70/28638	Item 666.25 9%	Item 680.60 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	San Francisco Cast-iron rollers
P75/81	Richardson, J. February 19 1975	C. J. Tower & Sons of Buffalo, Inc.	70/55814	Item 680.15 11.5%	Item 800.00 Free of duty	Agreed statement of facts	Buffalo American goods returned (molds)
P75/82	Ford, J. February 24, 1975	American Sanitary Rag Company et al.	67/11014, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/83	Ford, J. February 24, 1975	Sans & Streiffe, Inc., et al.	66/45357, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with, radios
P75/84	Ford, J. February 25, 1975	Amerisam Co., Inc.	68/68174, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with and chiefly used with, radios
P75/85	Landis, J. February 25, 1975	Warshawsky & Co., Inc.	72-9-02068	Item 653.39 19%	Item 683.65 5%	Warshawsky & Company v. U.S. (C.D. 4410)	Chicago Lights
P75/86	Maletz, J. February 25, 1975	C. J. Tower & Sons of Buffalo, Inc., Successor in Interest to C. J. Tower & Sons of Niagara, Inc., and C. J. Tower & Sons of Niagara, Inc.	70/52998	Item 612.60 2.5¢ per lb.	Item 911.10 Free of duty	Judgment on the pleadings	Buffalo Used copper cable

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/87	Ford, J. February 26, 1975	Associated Importers et al.	65/4263, etc.	Item 684.70 or 685.50 15%, 13% or 12%	Item 685.22 at 12.5%; item 685.25 at 11%, 10% or 8.5% (merchandise covered by protests listed on schedule "A", "B", "C" and "D", attached to order) Action on schedule "E" severed and dismissed	Judgment on the pleadings Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco, New York, Seattle, Portland (Oreg.) Earphones
P75/88	Ford, J. March 4, 1975	Mill Engineering & Machinery Co.	69/39219(A)	Item 666.25 10%	Item 680.60 2.5%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	San Francisco Cast-iron rollers
P75/89	Richardson, J. March 4, 1975	The Akron	68/8524	Item 651.75 At ad valorem equivalent rate set out in schedule of cases, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles 2 pc. fork/knife steak set

P75/90	Richardson, J. March 4, 1975	General Instrument Corporation	70/51577	Item 687.60 11% without allowance under item 807.00	Item 687.60/807.00 11%; cost or value of U.S. components (items marked "A") deductible from full value of imported transistors	Agreed statement of facts	New York American goods returned (transistors)
P75/91	Richardson, J. March 4, 1975	Monarch Sales Co	66/70244	Item 651.75 Various ad valorem equivalent rates as set forth in schedule "A", attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate specific or compound rate as set forth in column of said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once againt each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	Honolulu Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/92	Richardson, J. March 4, 1975	Otagiri Mercantile Co.	67/83394	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate specific or compound rate as set forth in column of said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P75/93	Landis, J. March 4, 1975	Hancock Gross, Inc.	70/55368, etc.	Item 657.80 15% Item 657.35 0.8¢ per lb. plus 10.5%	Item 654.20 13.5% Item 654.00 7%	Agreed statement of facts	Philadelphia Sanitary wares or parts thereof

P75/94	Watson, J. March 4, 1975	Hub Floral Mfg. Co.	69/53526, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")
P75/95	Watson, J. March 4, 1975	Joseph Markovits, Inc., et al.	69/26050, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial flowers, etc.
P75/96	Watson, J. March 4, 1975	Sidney Newhoff Associates	72-2-00366	Item 748.20 23.5%	Item 774.60 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P75/97	Ford, J. March 6, 1975	Fedtro, Inc.	68/18301, etc.	Irem 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/98	Watson, J. March 6, 1975	Artistic Creations, Inc., et al.	67/17307, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/99	Watson, J. March 6, 1975	Bens Supply, Inc., Div. of Ero Industries, et al.	72-2-00287, etc.	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc.
P75/100	Watson, J. March 6, 1975	Keen Industries, Inc.	71-9-01063, etc.	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc.
P75/101	Watson, J. March 6, 1975	B. A. McKenzie & Co. et al.	69/44669, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Seattle Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")

P75/102	Watson, J. March 6, 1975	Reliance Trading Corp. of Ill.	68/23302, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/103	Watson, J. March 6, 1975	Sol Spitz Co., Inc., et al.	72-12-02647, etc.	Item 748.20 23.5%, 22% or 21%	Item 774.60 11.5%, 10% or 8.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/104	Watson, J. March 6, 1975	Teters Floral Products Co.	69/53663, etc.	Item 748.20 26.5% or 26% (items marked "A" and "B")	Item 774.60 16% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/105	Watson, J. March 6, 1975	Wood, Niebuhr & Co. D. Arnold Associates, Inc.	70/22725, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Plastic artificial flowers, etc. (items marked "A" and "B")
P75/106	Re, J. March 6, 1975	Pacific Wood Products Co.	69/41508, etc.	Item 727.40 15% or 13.5%	Item 202.53 4% or 3%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Los Angeles Drawer sides and backs or lumber
P75/107	Watson, J. March 10, 1975	Aldik Artificial Flowers Co.	69/46094, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Plastic artificial flowers, etc. (items marked "A" and "B")

P75/108	Watson, J. March 10, 1975	American Express Co., a/c International Artware Corporation	67/7125, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/109	Watson, J. March 10, 1975	Florabelle Flowers, Inc.	72-3-00633	Item 748.20 22%	Item 774.60 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Various types of artificial flowers
P75/110	Watson, J. March 10, 1975	Joseph Markovits, Inc.	69/28049, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/111	Watson, J. March 10, 1975	New York Merchandise Co., Inc.	66/57634, etc.	Item 748.20 28% (items marked "A" and "C")	Item 774.60 17% (items marked "A" and "C")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) (items marked "C")	San Diego Merchandise in c.v. of plastic (items marked "A" and "C")
P75/112	Watson, J. March 10, 1975	Bernard Schwartz & Co.	71-11-01859	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc., et al. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; San Francisco Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/113	Watson, J. March 10, 1975	Teters Floral Products Co., Inc.	73-3-00648	Item 748.20 22% or 21%	Item 774.60 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans; Galveston; Laredo; Seattle Articles of plastic
P75/114	Boe, C.J. March 11, 1975	Majestic-Penn State, Inc.	74-4-01045	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Philadelphia Plastic bags in various sizes, having wide openings and handles with no closure on top
P75/115	Watson, J. March 11, 1975	S. Berger Import & Mfg. Corp.	67/47689-S, etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/116	Watson, J. March 11, 1975	James Betesh Import Co. et al.	67/66433, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/117	Watson, J. March 11, 1975	Joseph Markovits, Inc.	69/10775, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/118	Watson, J. March 11, 1975	National Silver Co.	70/55708, etc.	Item 772.06 21¢ per lb. plus 17%; or 18.9¢ per lb. plus 15%	Item 772.15 17% or 15%	Davar Products, Inc. v. U.S. (C.D. 3880)	New Bedford (Boston) Plasticware snack sets, cheese servers, salad bowls, lazy susans, etc.

P75/119	Watson, J. March 11, 1975	Signaigo & Rossi, Inc.	69/11376, etc.	Item 748.20 26.5% or 23.5%	Item 774.60 15% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New York Artificial flowers, etc
P75/120	Watson, J. March 11, 1975	Verona Dyestuffs Division Verona-Pharma Chemical Corp.	66/72452-S, etc.	Item 409.00 45% plus 7¢ per lb.; or 36% plus 5.5¢ per lb.	Item 405.25 18% plus 2.8¢ per lb.; or 14% plus 2.2¢ per lb.	Judgment on the pleadings	New York Urethane Black Paste AU and Urethane White Paste U
P75/121	Watson, J. March 11, 1975	James G. Wiley, a/c Tilford Imports, Inc.; Tilford Imports, Inc., dba Karol Western Corp.	72-5-00971	Item 772.06 18.9¢ per lb. plus 15%; or 14.7¢ per lb. plus 11.5%	Item 772.15 15% or 11.5%	Judgment on the pleadings	Los Angeles Plastic bowls
P75/122	Newman, J. March 11, 1975	Fedtro, Inc.	67/43551, etc.	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers
P75/123	Newman, J. March 11, 1975	Fedtro, Inc.	67/47531, etc.	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers
P75/124	Newman, J. March 11, 1975	Norca Corp.	66/13924, etc.	Item 657.35 13.5% plus 1¢ per lb.; 12% plus 1¢ per lb.; or 15% plus 1.275¢ per lb.	Item 654.00 10%, 9% or 8%	The Westbrass Company v. U.S. (C.D. 4293)	New York Shower heads

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/125	Richardson, J. March 12, 1975	Macy's of California et al.	67/23165, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate specific or compound rates; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set; rate set forth in schedule A in column "Claimed Rate" is the appropriate specific or compound rate for the set indicated	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets

P75/126	Watson, J. March 12, 1975	S. S. Kresge Co.	71-5-00101	Item 748.20 23.5%	Item 774.60 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New York Artificial fern clusters, in c.v. of plastic
P75/127	Watson, J. March 12, 1975	Joseph Markovits, Inc.	71-11-01800	Item 748.20 28%, 23.5% or 22%	Item 774.60 17%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York; Los Angeles Artificial flowers, etc.
P75/128	Watson, J. March 12, 1975	Rice Bayersdorfer Co.	69/32507	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v U.S. (C.D. 4185)	Philadelphia Artificial flowers, etc.
P75/129	Watson, J. March 12, 1975	Teters Floral Products Co., Inc.	73-8-02328	Item 748.20 22% or 21%	Item 774.60 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle; New York Articles of plastics
P75/130	Newman, J. March 12, 1975	Fedtro, Inc.	68/32301, etc.	Item 682.60 15%, 13% and 12%	Item 688.40 11.5%, 10% and 9%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/131	Newman, J. March 12, 1975	Mobilite, Inc.	67/51464, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together; dutiable separatetly, not as entireties
P75/132	Ford, J. March 13, 1975	Claudius Ash, Inc. C. J. Tower & Sons of Buffalo, Inc.	72-3-00512	Duty assessed on excessive quantity of merchandise because of error in entry	District director should reliquidate entry (No. 181229) in accordance with quantity and value of the merchandise as originally entered	Judgment on the pleadings	Buffalo Merchandise invoiced as "Sevriton Simplified Combinets" and parts thereof
P75/133	Ford, J. March 13, 1975	Ford Motor Company	72-11-02258	Item 536.15 20%	Item 531.27 3% Protest No. 3801-2-001316 (entry 71-186465) dismissed for lack of jurisdiction	Judgment on the pleadings Pittsburgh Plate Glass Company v. U.S. (C.D. 4553)	Detroit Tank blocks

P75/134	Ford, J. March 13, 1975	Quigley and Manard, Inc.	73-10-02890	Item 100.75 3%	Items 100.01 and 800.00 Free of duty	Judgment on the pleadings	Buffalo American goods returned (horses)
P75/135	Watson, J. March 13, 1975	M. Alder's Son, Inc.	67/39317	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/136	Watson, J. March 13, 1975	Asty—A Div. of A & T Importers, Inc., et al.	69/26918, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U. S. (C.D. 4396)	New York Artificial flowers, etc.
P75/137	Watson, J. March 13, 1975	S. Berger Imports Mfg. Corp. et al.	66/47865, etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U. S. (C.D. 4396)	New York. Artificial ferns, etc.
P75/138	Watson, J. March 13, 1975	Davar Products, Inc.	67/42622	Item 748.20 28% (items marked "C" and "A")	Item 774.60 17% (items marked "C") Item 772.15 17% (items marked "A")	Joseph Markovits, Inc. v. U. S. (C.D. 4396) (items marked "C") Agreed statement of facts (items marked "A")	New York Artificial ferns, etc. (items marked "C") Household articles wholly or in c.v. of plastic (items marked "A")
P75/139	Watson, J. March 13, 1975	Queen City Wreath, Inc., et al.	70/53052, etc.	Item 748.20 28%, 25% or 23.5%	Item 774.60 17%, 13.5% or 11.5%	Armbee Corporation et al. v. U. S. (C.D. 3278) Zunold Trading Corporation et al. v. U. S. (C.D. 3279) First American Artificial Flowers, Inc. v. U. S. (C.D. 4185)	Cincinnati (Cleveland) Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/140	Watson, J. March 13, 1975	Quon Quon Co.	68/27967	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/141	Landis, J. March 19, 1975	Fedtro, Inc.	67/43550, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/142	Landis, J. March 19, 1975	Mitsubishi International Corp. et al.	69/12886, etc.	Item 653.39 19%	Item 683.65 7.5% or 6.5%	Warshawsky & Company v. U.S.(C.D. 4410)	New York Spot lights or fog lights
P75/143	Landis, J. March 19, 1975	Spartans Industries, Inc., et al.	68/58465, etc.	Item 684.70 15% and 13%	Item 685.22 or 685.25 12.5% and 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/144	Watson, J. March 19, 1975	Artistic Creations, Inc.	68/34647	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Poly holly pick and poly balsam

P75/145	Watson, J. March 19, 1975	S. Berger Import & Mfg. Corp.	68/23271-S etc.	Item 748.20 28% and 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/146	Watson, J. March 19, 1975	S. Berger Imports & Mfg. Corp.	70/6405, etc.	Item 748.20 26%	Item 774.60 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/147	Watson, J. March 19, 1975	Kaytee Imports, Inc.	71-12-02085	Item 748.20 22%	Item 774.60 10%	Joseph Markovits, Inc v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/148	Watson, J. March 19, 1975	Joseph Markovits, Inc.	67/20322, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/149	Watson, J. March 19, 1975	Joseph Markovits, Inc.	68/07737, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/150	Re, J. March 19, 1975	John V. Carr & Son, Inc.	69/45661	Item 731.06 27%	Item 800.00 Free of duty	U.S. v. John V. Carr & Son, Inc. (C.A.D. 1118)	Detroit American goods returned (fish hooks)
P75/151	Boe, C. J. March 20, 1975	International Artware Corporation	72-8-01786	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Los Angeles Plastic Shopping bags

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P78/152	Ford, J. March 20, 1975	Montgomery Ward & Co.	66/20531, etc.	Item 684.70 15% (items marked "B") Item 706.08, 706.60 or 791.65 20% (items marked "C")	Item 685.22 12.5% (items marked "B") Radio cases properly dutiable as entireties with radios with which imported under item 685.22; not appraised according to law, liquidations void; actions dismissed as premature; entries returned to regional commissioner for appropriate administrative action (items marked "C")	General Electric Company v. U.S. (C.A.D. 1021); North American Foreign Trading Corp.v. U.S. (C.D.3968) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones (items marked "B" covered by protests on schedule A, attached to decision and judgment) Radio cases imported with radios (entireties) (items marked "C" covered by protests on schedule B, attached to decision and judgment)
P75/153	Landis, J. March 20, 1975	J. Gerber & Co., Inc., et al.	68/50080, etc.	Item 653.39 19% (items marked "A" and "B")	Protests premature; appraisements and liquidations not in accord-	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High-intensity lamps with bulbs (items marked "A"); fluorescent lamps with bulbs (items

					ance with law; protests dismissed; regional commissioner to take appropriate action not inconsistent with Order (items marked "A" and "B")		marked "B"); merchandise not entireties; dutiable as separate articles of commerce
P75/154	Landis, J. March 20, 1975	New York Merchandise Co., Inc.	72-12-02552	Item 772.06 12.5¢ per lb. plus 10%	Item 772.15 10%	Judgment on the pleadings	San Diego; Portland (Oreg.) Plastic chip and dip sets
P75/155	Watson, J. March 20, 1975	First American Artificial Flowers, Inc.	69/816, etc	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/156	Maletz, J. March 20, 1975	United Silver & Cutlery Co.	70/63064	Item 737.30 18%	Item 685.22 12.5%	Judgment on the pleadings U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	Los Angeles "No. 3800 Stuffed Poodle Radio"
P75/157	Newman, J. March 20, 1975	Fedtro, Inc.	68/27029	Item 682.60 13%	Item 688.40 10%	Fedtro, Inc. v. U.S. (C.D. 4548	New York Multi-purpose battery chargers
P75/158	Newman, J. March 20, 1975	Fedtro, Inc.	68/51951, etc.	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc v. US. (C.D. 4548)	NewYork Multi-purpose battery chargers
P75/159	Re, J. March 20, 1975	American Customs Brokerage Co.	71-11-01740	Item 206.67 32%	Item 765.03 Duty free	Sanji Kobata et al. v. U.S. (C.D. 4213)	Honolulu Japanese folding screens (Byobu)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/160	Newman, J. March 25, 1975	Durst Industries, Inc., et al.	66/14162, etc.	Item 657.20 19% or 17% (items marked "A", "B", or "C")	Item 653.95 17% or 15% (items marked "A"); 17%, 15% or 13.5% (items marked "C") Liquidations void; entries returned to regional commissioner for appropriate administrative action (items marked "B")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A", "B" and "C")	New York Flat strainers or basket strainer replacement cups (items marked "A" covered by protests in schedule B, attached to decision and judgment) Shower heads and shower drains (items marked "C" covered by protests in schedule B) Combination basket strainers and tray plugs (not entireties) (items marked "B" covered by protests in schedule A, attached to decision and judgment)
P75/161	Watson, J. March 26, 1975	Guy B. Barham Co. et al.	67/6106, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Plastic artificial flowers, etc.

P75/162	Watson, J. March 26, 1975	The Basket House	67/55985, etc.	Item 748.20 28% and 23.5%	Item 774.60 17% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Plastic artificial flowers, etc.
P75/163	Watson, J. March 26, 1975	G. R. Bolton, Inc.	73-2-00488	Item 748.20 22%	Item 774.60 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Plastic artificial flowers, etc.
P75/164	Watson, J. March 26, 1975	Joseph Markovits, Inc.	68/40975, etc.	Item 748.20 26.5%	Item 774.60 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Juan Artificial flowers, etc.
P75/165	Watson, J. March 26, 1975	Norman Industries, Inc.	69/5696, etc.	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Merchandise in c.v. of plastic
P75/166	Watson, J. March 26, 1975	Nous	69/45437	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Plastic artificial flowers, etc.
P75/167	Watson, J. March 26, 1975	Shenandoah Floral Mfg. Co., Inc.	72-4-00747	Item 748.20 23.5% and 22%	Item 774.60 11.5% and 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Baltimore Artificial ferns, etc.

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P75/168	Watson, J. March 26, 1975	Union Novelty Co., Inc.	73-1-00286	Item 748.20 22% and 21%	Item 774.60 10% and 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/169	Watson, J. March 27, 1975	The American Import Co.	67/5481, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic
P75/170	Watson, J. March 27, 1975	European Trading Co.	70/7503	Item 207.00 13%	Item 202.53 5%	Agreed statement of facts	San Francisco Balsa; glued hardwood
P75/171	Watson, J. March 27, 1975	Arthur J. Fritz & Co.	71-10-01463	Item 748.20 25% or 23.5%	Item 774.60 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial plastic ferns and bananas
P75/172	Watson, J. March 27, 1975	L. Reinganum & Sons, Inc.	71-8-00727	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc.

P75/173	Re, J. March 27, 1975	New York Merchandise Co., Inc.	69/33082	Item 772.15 13.5%	Item 772.35 10%	Judgment on the pleadings Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Portland, Oreg. PVC mattress covers
P75/174	Re, J. March 27, 1975	New York Merchandise Co., Inc.	70/9160	Item 772.15 13.5%	Item 772.35 10%	Judgment on the pleadings Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Portland, Oreg. Printed vinyl fitted mattress covers
P75/175	Ford, J. March 31, 1975	Linen Imports et al.	65/16997, etc.	Item 684.70 or 685.50 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Francisco Earphones chiefly used as parts of radios and when used are essential to the function of the radio
P75/176	Richardson, J. March 31, 1975	L. Batlin & Son, Inc., et al.	66/36270, etc.	Item 653.40 19%	Item 688.40 11.5%	L. Batlin & Son, Inc. v. U.S. (C.D. 4365, aff'd C.A.D. 1111)	New York Electrified bird cages
P75/177	Landis, J. March 31, 1975	Fedtro, Inc., et al.	69/15585, etc.	Item 684.70 15% and 13%	Items 685.22 and 685.25 12.5% and 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/178	Landis, J. March 31, 1975	Spiegel, Inc., et al.	72-9-02064, etc.	Item 684.70 12%, 10% or 9%	Item 685.25 10%, 8.5% or 7%	Agreed statement of facts	Chicago Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/179	Watson, J. March 31, 1975	Bam-Bee's, Inc., James G. Wiley Co.	67/63695, etc.	Item 748.20 28% or 23.5%	Item 774.60 17% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Plastic artificial flowers, etc.
P75/180	Watson, J. March 31, 1975	Creative Art Flowers, Inc.	67/19126, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Plastic artificial flowers
P75/181	Watson, J. March 31, 1975	Joseph Markovits, Inc., et al.	70/54956, etc.	Item 748.20 28%, 25% or 23.5%	Item 774.60 17%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial flowers, etc.
P75/182	Watson, J. March 31, 1975	New York Merchandise Co., Inc.	67/18366, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C. D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic

P75/183	Ford, J. April 1, 1975	Sony Corp. of America	67/44124	Par. 353 15% (items marked "A") Par. 1531 20% (items marked "B")	Par. 353 12½% (items marked "A" and "B")	Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Leather cases imported with radios (entireties) (items marked "B")
P75/184	Richardson, J. April 1, 1975	Adolco Trading Co.	72-2-00396	Item 389.60 25¢ per lb. plus 18%	Item 386.08 30%	Agreed statement of facts	New York Net string shopping bags
P75/185	Richardson, J. April 1, 1975	Kelco, Inc.	71-10-01385, etc.	Item 652.35 15%, 13% or 11%	Item 652.18 10%, 8.5% or 7%	Kelco, Incorporated, et al. v. U.S. (C.D. 3931)	Portland, Oreg. Conveyor chain, chiefly used for transmission of power, and parts
P75/186	Richardson, J. April 1, 1975	Westwood Import Co., Inc.	69/45499	Item 654.10 3.1¢ per lb. plus 15%	Item 649.57 15%	Judgment on the pleadings Arbor Import Corp. v. U.S. (C.D. 3955)	San Diego "#1121A Regular Ice Cream Scoop (Die-cast Aluminum)"
P75/187	Richardson, J. April 1, 1975	Westwood Import Co., Inc.	72-4-00744	Item 651.53 2.5¢ per lb. plus 13.5%	Item 649.57 13.5¢	Judgment on the pleadings Arbor Import Corp. v. U.S. (C.D. 3955)	San Diego "#1121A Regular Ice Cream Scoop in vinyl bag" and "#1121 SPD Ice Cream Deal"

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/188	Landis, J. April 1, 1975	The Westbrass Co.	72-12-02626	Item 657.35 0.7¢ per lb. plus 9%	Item 654.00 6%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Brass showerheads
P75/189	Watson, J. April 1, 1975	Rice Bayersdorfer Co. et al.	71-10-01310, etc.	Item 748.20 23.5%, 22% and 21%	Item 774.60 11.5%, 10% and 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial ferns, etc.
P75/190	Watson, J. April 1, 1975	Rice Bayersdorfer Co.	73-2-00450	Item 748.20 22%	Item 774.60 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial ferns, etc.
P75/191	Watson, J. April 2, 1975	Grand Artificial Flower Corp.	67/46146, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.
P75/192	Watson, J. April 2, 1975	Joseph Markovits, Inc.	69/10774, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

P75/193	Watson, J. April, 2 1975	Montcalm Products Corp.	60/14095, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/194	Landis, J. April 3, 1975	Enwell Industrial Corp.	72-8-01808	Item 732.36 18%	Item 646.56 0.1¢ per lb.	Agreed statement of facts	New Orleans Hub nuts in various sizes
P75/195	Landis, J. April 3, 1975	Jos. Lucas North America, Inc.	73-2-00358	Item 660.54 5%, 6% or 7%	Item 660.92 4%, 3.5% or 3%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	New York Parts of fuel injection pumps
P75/196	Watson, J. April 3, 1975	Airborne Freight Corporation Lighty Manufacturing et al.	68/3394, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396	Los Angeles Merchandise in c.v. of plastic
P75/197	Boe, C.J. April 7, 1975	Delaware Mercantile Co., Inc.	72-10-02194	Item 732.36 18%	Item 642.20 11%	Agreed statement of facts	Chicago Cables in c.v. of wire, fitted with barrel or ferrule ends, used to transmit force in connection with caliper brakes of bicycles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/198	Watson, J. April 7, 1975	Allied Display Materials, Inc., et al.	71-9-01005, etc.	Item 748.20 25%, 23.5% or 21%	Item 774.60 13.5%, 11.5% or 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P75/199	Watson, J. April 7, 1975	Florabelle Flowers, Inc., et al.	67/72091, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P75/200	Newman, J. April 7, 1975	The American Import Company et al.	68/7022, etc.	Item 206.97 or 207.00 16⅔% or 15%	Item 727.35 10.5% or 9%	The American Import Co. et al. v. U.S. (C.D. 3807)	San Francisco Gun racks
P75/201	Newman, J. April 7, 1975	Mobilite, Inc.	72-7-01550	Item 653.39 19%	Item 686.90 4% on basis of export value; said values are $0.12 each, net packed (bulbs) Item 653.39 19% on basis of export value; said values are appraised values less $0.12 each, net packed, for each included bulb (lamps)	Mobilite, Inc. v. U.S. (C.D. 4478)	New York High intensity lamps and bulbs imported together; dutiable separately; not as entireties

P75/202	Ford, J. April 8, 1975	B.P.M. International, Ltd., et al.	67/60770, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones
P75/203	Ford, J. April 8, 1975	Kanematsu Gosho (USA), Inc.	70/59372	Item 684.70 12%	Item 685.25 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones
P75/204	Ford, J. April 8, 1975	New York Merchandise Co., Inc.	69/48557	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings	Los Angeles Earphones
P75/205	Landis, J. April 8, 1975	Arrow Trading Co. et al.	69/53058 etc.	Item 653.39 19%	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York High-intensity lamps with bulbs (items marked "A"); fluorescent lamps with bulbs (items marked "B"); not entireties
P75/206	Watson, J. April 8, 1975	Advance Pet Supply Co. et al.	66/77080, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/207	Watson, J. April 8, 1975	American Customs Brokerage et al.	68/27069, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Honolulu Artificial flowers, etc.
P75/208	Watson, J. April 8, 1975	Asty a Div. of A & T Importers, Inc.	67/56864, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/209	Watson, J. April 8, 1975	Creative Art Flowers, Inc.	70/1712, etc.	Item 748.20 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A") Ferns in c.v. of plastic (items marked "B")
P75/210	Watson, J. April 8, 1975	Bruce Duncan Co., Inc., et al.	70/2161, etc.	Item 748.20 28% or 25%	Item 774.60 17% or 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic

P75/211	Watson, J. April 8, 1975	Ken Hamanaka, a/c Sanmar Gray Co., et al.	67/6147, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic.
P75/212	Watson, J. April 8, 1975	Quon Quon Co.	68/64415, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Merchandise in c.v. of plastic
P75/213	Watson, J. April 8, 1975	Zunold Trading Corp. et al.	66/29402(B), etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A") Ferns or fruits in c.v. of plastic (items marked "B")
P75/214	Maletz, J. April 8, 1975	Exhibit Sales, Inc., et al.	70/44369, etc.	Item 737.90 or 737.40 28% or 24%	Item 772.97 13.5% or 11.5%	Amico, Inc., etc. v. U.S. (C.D. 4566)	Philadelphia Various inflatable articles (Santas, Santa balls, etc.)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/215	Boe, C.J. April 9, 1975	Arkay Importing Co., Inc.	74-9-02613	Item 737.90 17.5%	Item 734.20 5.5%	Agreed statement of facts	New York Disc operated game machines (having mechanical controls for manipulating the action)
P75/216	Boe, C.J. April 9, 1975	Kemtron Products Co., et al.	65/12201, etc.	Item 737.15 35%, 31% or 28% (items marked "B", "C", "F", "I", "L")	Item 680.45 9%, 8% or 7% (items marked "B") Item 680.48 45%, 40% or 30% (items marked "C") Item 774.60 17%, 15% or 13.5% (items marked "F") Item 652.88 19%, 17% or 15% (items marked "I") Item 657.35 1.27¢ per lb. +15%; 1¢ per lb. + 13.5%; or 1¢ per lb. + 12% (items marked "L")	Agreed statement of facts	San Francisco Gear box with worm and shaft or worm gears alone or worm gears imported with shafts only (items marked "B") Gear boxes, and other worm gears, with or without shaft (items marked "C") Plastic washers (items marked "F") Springs in c.v. of base metal (items marked "I") Parts in c.v. of brass (item marked "L")

P75/217	Boe, C.J. April 9, 1975	Travenol Labs, Inc.	73-12-03412	Item 771.35 10¢ per lb.	Item 854.20 Free of duty	Agreed statement of facts	Chicago Cellulosic plastics materials imported for use in artificial kidney machines or apparatus
P75/218	Ford, J. April 9, 1975	Dejur Amsco Corp.	66/26283, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Agreed statement of facts (items marked "B")	New York Earphones (items marked "A") Microphones/loudspeakers (items marked "B")
P75/219	Ford, J. April 9, 1975	Valiant Radio Corp. et al.	67/85626, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones
P75/220	Landis, J. April 9, 1975	E. Mishan & Sons et al.	68/67851, etc.	Item 653.39 19%	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York High-intensity lamps with bulbs (items marked "A"); fluorescent lamp with bulbs (item marked "B"); not entireties
P75/221	Watson, J. April 9, 1975	Regency Flowers, Inc., et al.	69/51725, etc.	Item 748.20 25%, 23.5% or 28%	Item 774.60 13.5%, 11.5% or 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns in c.v. of plastic
P75/222	Newman, J. April 9, 1975	Fedtro, Inc.	69/49349, etc.	Item 682.60 13% and 12%	Item 688.40 10% and 9%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/223	Boe, C.J. April 15, 1975	M. B. Daniels & Co., Inc.	71-10-01291	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P75/224	Boe, C.J. April 15, 1975	Exhibit Sales Co. et al.	68/58700, etc.	Item 654.00 or 653.39 19%	Appraisements void; liquidations premature and void; protests dismissed; entries remanded to district director for administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	Philadelphia Lamps imported with electrical light bulbs; not entireties
P75/225	Boe, C.J. April 15, 1975	J. Gerber & Co., Inc., et al.	69/51497, etc.	Item 653.39 19%	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York High intensity lamps and bulbs; not entireties

P75/226	Ford, J. April 15, 1975	Dejur Amsco Corp.	66/64204, etc.	Item 684.70 15% (items marked "A", "B" and "C")	Item 685.40 11.5% (items marked "A", "B" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A" and "B") Agreed statement of facts (items marked "C")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B") Microphones, loudspeakers; parts of such machines (items marked "C")
P75/227	Ford, J. April 15, 1975	Dejur Amsco Corp.	66/68481, etc.	Item 684.70 15% (items marked "A" "B" and "C")	Item 685.40 11.5% (items marked "A" "B" and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Agreed statement of facts (items marked "B" and "C")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B") Microphones, loudspeakers; parts of such machines (items marked "C")
P75/228	Ford, J. April 15, 1975	The Durst Mfg. Co., Inc.	298204-K, etc.	Par. 397 Rate in effect on date merchandise was	Par. 339 Rate in effect on date merchandise en-	Davies, Turner & Company v. U.S. (Abs. 67184 and Abs. 69651) (items marked "A" and "B")	New York Basket strainer replacement cups in c.v. of brass (items marked "A")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
				entered or withdrawn from warehouse for consumption (items marked "A", "B", "C" and "D")	tered for consumption as set forth in schedule C attached to decision and judgment (items marked "A" and "B" covered by protests set forth in schedule "A") Liquidations void; protests premature and dismissed; entries returned to regional commissioner for administrative action (items marked "C" and "D" covered by protests set forth in schedule B)	Hancock Gross Mfg., Inc. v. U.S. (C.D. 3459) (items marked "C" and "D")	Strainer replacement cups in c.v. of steel (items marked "B") Combination basket strainers consisting of a basket insert or replacement cup, as well as a base; basket insert portions in c.v. of brass (items marked "C") in c.v. of steel (items marked "D"); not entireties

P75/229	Ford, J. April 15, 1975	Englishtown Corp.	67/83741	Item 692.55 12%	Item 683.65 8.5%	Agreed statement of facts	Philadelphia Sealed beam electric headlights for motorcycle vehicles
P75/230	Ford, J. April 15, 1975	R. J. Saunders & Co., Inc.	68/1979	Item 684.70 15%	Item 685.40 11.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P75/231	Re, J. April 15, 1975	Tree Products Company	63/12285, etc.	Par. 412 17%	Par. 1803(1) Duty free, with assessment of tax under sec. 4551(1), I.R.C. of 1954, mf'd by T.D. 51802, at $1.50 per 1,000 ft. board measure	Agreed statement of facts	Longview (Portland, Oreg.) Lauan lumber (sawed lumber)
P75/232	Richardson, J. April 16, 1975	Kreiss Corporation et al.	66/65057, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Los Angeles Electric bird cages, etc.
P75/233	Richardson, J. April 16, 1975	National Silver Co.	63/3333, etc.	Par. 211 40%, 25% or 20% and 10¢ per doz. pcs.	Par. 210 12½% and 6¼%	National Silver Co. v. U.S. (C.D. 2894)	San Diego Rockingham articles
P75/234	Landis, J. April 16, 1975	Lucas Electrical Service, Inc.	73-8-02410	Item 653.39 19%	Item 683.65 5.5%	Warshawsky & Company v. U.S. (C.D. 4410)	New York Driving lights and fog lights

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/235	Watson, J. April 16, 1975	Associated Dry Goods Corp.	68/32501, etc.	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.
P75/236	Watson, J. April 16, 1975	First American Artificial Flowers, Inc., et al.	70/58641, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5%, 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/237	Watson, J. April 16, 1975	Harper Robinson & Co.	68/68308	Item 748.20 26.5% (items marked "A" and "B")	Item 774.60 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New Orleans Artificial flowers, etc. (items marked "A" and "B")
P75/238	Watson, J. April 16, 1975	Kwan Yuen Co. et al.	67/79000, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc. (items marked "A") Articles of plastic (items marked "B")

P75/239	Maletz, J. April 16, 1975	Creative Playthings, Inc.	68/1104	Item 737.90 35%	Item 737.55 21%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P75/240	Newman, J. April 16, 1975	Fedtro, Inc.	70/32920, etc.	Item 682.60 12% and 10%	Item 688.40 9% and 8%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/241	Newman, J. April 16, 1975	Mobilite, Inc.	66/64990, etc.	Item 653.35 10.5% Item 653.40 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York High intensity lamps and bulbs; not entireties
P75/242	Newman, J. April 16, 1975	Mobilite, Inc.	68/32907, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together; (not entireties)
P75/243	Newman, J. April 16, 1975	World Weavers, Ltd., et al.	60/14368, etc.	Pars. 1122 and 1109(a) 37½¢ per lb. plus 45% (on wool content)	Pars. 1122 and 1109(a) (T.D. 51802) 37½¢ per lb. plus 25% (on wool content)	Borneo Sumatra Trading Co., Inc. v. U.S. (C.D. 3280)	New York Woven fabrics containing wool

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/244	Boe, C.J. April 17, 1975	A & S Trading Corp. et al.	66/80548, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/245	Boe, C.J. April 17, 1975	I.T.T. Export Corp. et al.	67/77467, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P75/246	Boe, C.J. April 17, 1975	Mitsui & Co. (U.S.A.), Inc.	72-11-02317	Item 409.00 4.9¢ per lb. + 31%	Item 406.70 28%	Judgment on the pleadings	Norfolk "Copper Phthalocyanine Blue NCNF 40"
P75/247	Ford, J. April 17, 1975	Dejur Amsco Corp.	66/28353, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Agreed statement of facts (items marked "B")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Microphones, loudspeakers; parts of such machines (items marked "B")
P75/248	Ford, J. April 17, 1975	J. C. Penney Purchasing Corp. et al.	67/16614, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	San Francisco Earphones
P75/249	Watson, J. April 17, 1975	Aimcee Wholesale Corp. et al.	68/69173, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Artificial flowers, etc.

P75/250	Watson, J. April 17, 1975	City Products Corporation	70/28195	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial flowers, etc.
P75/251	Watson, J. April 17, 1975	International Paper Co. et al.	67/34508, etc.	Item 421.44 50¢ per ton	Item 421.42 Free of duty	Berkshire Chemicals, Inc., et al. v. U.S. (C.D. 4117)	Mobile Saltcake (i.e.: sodium sulfate suitable for use only in the kraft pulp and paper industry)
P75/252	Watson, J. April 17, 1975	Joseph Markovits, Inc., et al.	70/38930, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/253	Watson, J. April 17, 1975	Pier I Imports, Inc., et al.	70/50090, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/254	Newman, J. April 17, 1975	Mobilite, Inc.	67/54152, etc.	Item 653.35 10.5% Item 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action.	Mobilite, Inc. v. U.S. (C.D. 4478)	New York High intensity and fluorescent lamps and bulbs (not entireties)
P75/255	Boe, C.J. April 22, 1975	General Electric Company	70/41926, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Agreed statement of facts	Utica (Buffalo) Earphones (not headphones) of a type chiefly used with radios
P75/256	Watson, J. April 22, 1975	M. Adler's Son, Inc., et al.	70/49337, etc.	Item 748.20 28%, 26.5%, 25%, or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/257	Watson, J. April 22, 1975	Joseph Markovits, Inc.	70/530, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/258	Maletz, J. April 22, 1975	Border Brokerage Co., Inc., a/c Jones Tent & Awning, Ltd.	72-7-01669, etc.	Item 380.90 12% or 10%	Item 748.40 8% or 7%	Agreed statement of facts	Seattle Parkas, described as Eldorado jackets, in c.v. of down, which is not a textile material
P75/259	Ford, J. April 24, 1975	BPM International, Ltd.	68/6186, etc.	Item 684.70 15%	Item 685.40 11.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones; parts of dictation, recording and transcribing machines
P75/260	Watson, J. April 24, 1975	M. Adler's Son, Inc.	69/28044, etc.	Item 748.20 26.5%, 25% or 23.5%	Item 774.60 15%, 13.5% or 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.
P75/261	Watson, J. April 24, 1975	Astor Flower & Novelty Co.	67/24569	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D 4396)	New York Apricots in c.v of plastic
P75/262	Watson, J. April 24, 1975	Creative Art Flowers, Inc.	73-1-00085, etc.	Item 748.20 21%	Item 774.60 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns, in c.v of plastic
P75/263	Watson, J. April 24, 1975	Montcalm Products Corp.	69/44803, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 17%, 15% or 13.5%	Joseph Markovits, Inc. v. U.S. (C.D 4396)	New York Artificial flowers, etc.

P75/264	Watson, J. April 24, 1975	Powers Flowers, Inc., et al.	68/43278, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S (C.D. 3279)	San Francisco Artificial flowers, etc.
P75/265	Watson, J. April 24, 1975	Powers Flowers, Inc.	70/18194	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc.
P75/266	Watson, J. April 24, 1975	Regency Flowers, Inc., et al.	66/63201, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P75/267	Watson, J. April 24, 1975	Teters Floral Products Co.	72-6-01274	Item 748.20 26.5%, 23.5% or 22%	Item 774.60 15%, 11.5% or 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans; Laredo; Seattle Artificial flowers, etc.
P75/268	Watson, J. April 24, 1975	United China & Glass Company	68/10075, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Merchandise in c.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/269	Watson, J. April 24, 1975	F. W. Woolworth Co. et al.	70/42249, etc.	Item 748.20 26.5%, 25% or 28% (items marked "A" and "B")	Item 774.60 15%, 13.5% or 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Ferns in c.v. of plastic (items marked "B")
P75/270	Watson, J. April 24, 1975	Zunino Altman, Inc., et al.	67/27048, etc.	Item 748.20 28% or 25% (items marked "A" and "B")	Item 774.60 17% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc. (items marked "A") Artificial ferns in c.v. of plastic (items marked "B")
P75/271	Newman, J. April 24, 1975	Fedtro, Inc.	69/49272, etc.	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4545)	New York Multi-purpose battery chargers
P75/272	Boe, C.J. April 29, 1975	Dejur Amsco Corp.	67/36394, etc.	Item 684.70 15% and 13%	Item 685.40 11.5% or 10%	Agreed statement of facts	New York Articles solely or chiefly used as parts of dictation recording machines, comprised of microphone/ loudspeaker

P75/273	Boe, C.J. April 29, 1975	Dejur Amsco Corp. et al.	69/7797, etc.	Item 684.70 13% (items marked "A", "B" and "C")	Item 685.40 10% (items marked "A", "B" and "C")	Agreed statement of facts (items marked "A", "B" and "C")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B") Microphones, loudspeakers; parts of such machines (items marked "C")
P75/274	Boe, C.J. April 29, 1975	J. Gerber & Co., Inc., et al.	69/1221, etc.	Item 653.40 19% (items marked "A" and "B")	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action (items marked "A" and "B")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High-intensity lamps with bulbs (items marked "A"); desk lamps with bulbs (items marked "B"); not entireties
P75/275	Ford, J. April 29, 1975	Dejur Amsco Corp.	66/59763, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Agreed statement of facts (items marked "B")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Microphones/loudspeakers; parts of such machines (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/276	Richardson, J. April 29, 1975	Castelazo & Associates, a/c Korody Colyer Corp., et al.	71-8-00732, etc.	Item 660.54 7%	Item 660.92 4%	Korody - Colyer Corp. v. U.S. (C.D. 4212)	Los Angeles Parts for fuel injection pumps
P75/277	Watson, J. April 29, 1975	Adler Enterprises	67/62958, etc.	Item 748.20 28% or 25% (items marked "A" and "B")	Item 774.60 17% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Chicago Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")
P75/278	Watson, J. April 29, 1975	Hub Floral Manufacturing Co.	65/25170, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")

P75/279	Watson, J. April 29, 1975	Mitsubishi Int'l Corp.	72-8-01847	Item 685.30 8%	Item 678.50 6%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM/FM-stereo with 8 track cartridge player without speakers
P75/280	Watson, J. April 29, 1975	Montgomery Ward & Co.	73-3-00633, etc.	Item 685.30 6.5% Item 685.50 9% and 7.5%	Item 678.50 6% and 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York AM/FM stereo phono 8 track assembly with or without speakers or accessories
P75/281	Watson, J. April 29, 1975	Standard Specialty Co:	67/23512, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")
P75/282	Watson, J. April 29, 1975	Teters Floral Products Co.	65/31052, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/283	Maletz, J. April 29, 1975	Pacific Fast Mail, Inc.	66/56555, etc.	Item 737.15 or 737.90 35%, 31% or 28% (items marked "A" through "P")	Item 737.07 16%, 14% or 12.5% (items marked "A") Item 680.45 9%, 8% or 7% (items marked "B") Item 680.48 45%, 40% or 36% (items marked "C") Item 646.75 23.5%, 21% or 18% (items marked "D") Item 646.60 22.5%, 20% or 18% (items marked "E") Item 774.60 17%, 15% or 13.5% (items marked "F") Item 774.40 8.5%, 7.5% or 6.5% (items marked "G") Item 646.41 14%, 12.5% or	Pacific First Mail v. U.S. (C.D. 4333) (items marked "A") Agreed statement of facts (items marked "B" through "P")	Seattle Locomotive super structures (items marked "A") Gearboxes with worm and shaft or worm gears alone or worm gears imported with shafts only (items marked "B") Gearboxes, and other worm gears, with or without shafts (items marked "C") Miniature screws, washers, crank pins of brass and nickel-plated brass (items marked "D") Iron or steel screws (items marked "E") Plastic washers (items marked "F") Fiber washers (items marked "G") Rivets of base metal (items marked "H") Springs of base metal (items marked "I") Universal joints (items marked "J") Parts of iron or steel (items

			11% (items marked "H")		marked "K")
			Item 652.88		Parts of brass (items marked "L")
			19%, 17% or 15% (items marked "I")		Parts of nickel (items marked "M")
			Item 680.54		Parts of zinc (items marked "N")
			15%, 13% or 11% (items marked "J")		Parts of lead: valued not over 13½¢ per lb. (items marked "O"); valued over 13½¢ per lb. (items marked "P")
			Item 657.20		
			19%, 17% or 15% (items marked "K")		
			Item 657.35		
			1.27¢ per lb. + 15%; 1¢ per lb. + 13.5%; or 1¢ per lb. + 12% (items marked "L")		
			Item 657.50		
			18%, 16% or 14% (items marked "M")		
			Item 657.60		
			19%, 17% or 15% (items marked "N")		
			Item 657.70		
			1.5¢ per lb., 1.35¢ per lb. or 1.2¢ per lb. (items marked "O")		
			Item 657.75		
			10%, 9% or 7.5% (items marked "P")		

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/284	Newman, J. April 29, 1975	Fedtro, Inc.	68/26329, etc.	Item 684.70 15% (items marked "A") Item 682.60 15% (items marked "B")	Item 685.22 12.5% (items marked "A") Item 688.40 11.5% (items marked "B")	Agreed statement of facts (items marked "A") Fedtro, Inc. v. U.S. (C.D. 4548) (items marked "B")	New York Earphones (not headphones) of a type chiefly used with radios (items marked "A") Multipurpose battery chargers (items marked "B")
P75/285	Boe, C.J. April 30, 1975	Astra Trading Corp. et al.	68/2371, etc.	Item 653.40 19% (items marked "A" and "B")	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action (items marked "A" and "B")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High intensity lamps with bulbs (items marked "A"); desk lamps with bulbs (items marked "B"); not entireties

P75/286	Boe, C.J. April 30, 1975	Delaware Mercantile	72-6-01323	Item 732.36 18%	Item 642.20 11%	Agreed statement of facts	Chicago Caliper brake cables (wire cables)
P75/287	Richardson, J. April 30, 1975	New York Merchandise Co., Inc.	66/3414 etc.	Item 651.75 At ad valorem equivalent set out in schedule attached to decision and judgment, in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, etc.
P75/288	Watson, J. April 30, 1975	More Displays et al.	66/31177, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc., v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4366) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")
P75/289	Watson, J. April 30, 1975	Royal Cathay Trading	70/11837, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/290	Watson, J. May 6, 1975	Armbee Corp.	67/168, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc. (items marked "A") Articles of plastics (items marked "B")
P75/291	Watson, J. May 6, 1975	Florabelle Flowers, Inc., et al.	70/58970, etc.	Item 748.20 26.5% 25% 23.5% or 28%	Item 774.60 15%, 13.5%, 11.5% or 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns in c.v. of plastic
P75/292	Newman, J. May 6, 1975	Air Express Int'l. Agency et al.	67/79717, etc.	Item 531.39 15%	Item 531.27 3%	Pittsburgh Plate Glass Company v. U.S. (C.D. 4553)	San Francisco Refractory bricks and blocks
P75/293	Newman, J. May 6, 1975	Durst Industries, Inc.	66/15852	Item 657.35 1.275¢ per lb. plus 15% (as entireties)	Appraisements and liquidations void; protest premature and dismissed; entries returned to regional commissioner for administrative action	The Westbrass Company v. U.S. (C.D. 4293)	New York Combination of strainers imported with bases; separate articles of commerce

P75/294	Ford, J. May 7, 1975	DeJur Amsco Corp.	66/41157, etc.	Item 684.70 15% (items marked "A", "B"and "C")	Item 685.40 11.5% (items marked "A", "B"and "C")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)(items marked "A") Agreed statement of facts (items marked "B" and "C")	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B") Microphones/loudspeakers; parts of such machines (items marked "C")
P75/295	Ford, J. May 7, 1975	Fedtro, Inc.	67/55533	Item 790.55 20%, 18%, 16% and 14%	Item 774.60 17%, 15%, 13.5% and 11.5%	Agreed statement of facts	New York Reflectors, etc.
P75/296	Ford, J. May 7, 1975	F. W. Myers & Co., Inc.	68/26008	Item 692.35 11.5%	Item 692.30 Free of duty	Judgment on the pleadings F. W. Myers & Company, Inc. v. U.S. (C.D. 3182); (C.D. 4256, aff'd C.A.D. 1097)	Champlain—Rouses Point (Ogdensburg) J-5 tractors
P75/297	Ford, J. May 7, 1975	Pitney Bowes, Inc.	70/60564	Item 657.20 17%	Item 676.30 9%	Judgment on the pleadings Pitney-Bowes, Inc. v. U.S. (Abs. P71/33)	New York "Hand Letter Openers"
P75/298	Watson, J. May 7, 1975	Price Enterprises et al.	71-12-02040, etc.	Item 748.20 25%, 23.5%, 22% or 21%	Item 774.60 13.5%, 11.5%, 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joesph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Plastic artificial flowers, etc.
P75/299	Watson, J. May 7, 1975	Ross Products, Inc.	68/54931, etc.	Item 748.20 26.5%	Item 774.60 17% and 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Artificial ferns, etc.
P75/300	Newman, J. May 7, 1975	Ford Motor Company	73-5-01172	Item 536.15 20%	Item 531.27 Free of duty	Pittsburgh Plate Glass Company v. U.S. (C.D. 4553)	Detroit Glass tank blocks

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/301	Richardson, J. May 13, 1975	D. P. Harris Hardware & Mfg. Co., Inc., et al.	70/61268, etc.	Item 732.36 30%, 27%, 24% or 21%	Item 642.20 19%, 17%, 15% or 13%	Agreed statement of facts	New York Cables, fitted with fittings, or made up into articles, in c.v. of wire
P75/302	Watson, J. May 14, 1975	Import Associates of America, Inc.	68/1	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Artificial flowers, etc. in c.v. of plastic
P75/303	Watson, J. May 14, 1975	S. H. Kress & Co.	69/22131	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc., in c.v. of plastic (items marked "A") Ferns or fruits in c.v. of plastic (items marked "B")
P75/304	Watson, J. May 14, 1975	Montgomery Ward & Co.	72-4-00800	Item 685.30 8% (items marked "A") Item 685.90 10% (items marked "B")	Item 678.50 6% (items marked "A") Item 685.25 7% (items marked "B")	Montgomery Ward & Co. v. U.S. (C.D. 4573) (items marked "A") U.S. v. General Electric Co. (C.A.D. 1021) (items marked "B")	New York AM/FM stereo phono 8 track assembly with speakers (item marked "A") Jacks (items marked "B")
P75/305	Watson, J. May 14, 1975	Zunold Trading Corp.	69/20898	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Ferns in c.v. of plastics

P75/306	Newman, J. May 14, 1975	Fedtro, Inc.	70/29663, etc.	Item 682.60 15%, 13%, 12% and 10%	Item 688.40 11.5%, 10%, 9% and 8%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers
P75/307	Newman, J. May 14, 1975	S. Hiller & Co. et al.	67/21014, etc.	Item 653.40 19% (items marked "A", "B" and "C")	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action (items marked "A", "B" and "C")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A", "B" and "C")	New York High-intensity lamps with bulbs (items marked "A"); electric lamps with bulbs (items marked "B"); fluorescent lamps with bulbs (items marked "C"); not entireties
P75/308	Boe, C. J. May 15, 1975	Libby Owens Ford Glass Co.	73-1-00039	Item 531.39 10%	Item 531.27 1%	Judgment on the pleadings Pittsburgh Plate Glass Company v. U.S. (C.D. 4553)	San Francisco Refractory bricks and shapes or tank blocks
P75/309	Watson, J. May 15, 1975	M. Adler's Son, Inc.	72-12-02576	Item 748.20 21%	Item 774.60 8.5%	Judgment on the pleadings Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc., in c.v. of plastics
P75/310	Watson, J. May 15, 1975	Regency Flowers, Inc., et al.	73-1-00086, etc.	Item 748.20 21%	Item 774.60 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns, in c.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/311	Watson, J. May 15, 1975	F. W. Woolworth Co.	74-5-01308	Item 748.20 22%	Item 774.60 10%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Various types of ferns, in c.v. of rubber or plastic
P75/312	Newman, J. May 15, 1975	Amerex Trading Corp. et al.	67/11865, etc.	Item 653.40 19% (items marked "A" "B" and "C")	Protest premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action (items marked "A", "B" and "C")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A", "B" and "C")	New York High-intensity lamps with bulbs (items marked "A"); fluorescent lamps with bulbs (items marked "B"); electric lamps with bulbs (items marked "C"); not entireties
P75/313	Ford, J. May 20, 1975	General Electric Company	65/5986, etc.	Item 685.90 17% and 17.5% Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	Utica (Buffalo) Jacks ass. at 17% under 685.90 (Court No. 66/2269) Earphones ass. at 15% under 684.70 (Court Nos. 65/5986, 65/5987, 65/8704, 67/20409) Jacks ass. at 17.5% under 685.90 and earphones ass. at 15% under 684.70 (Court Nos. 65/25049, 67/20377, 67/20379, 67/20400)

P75/314	Ford, J. May 20, 1975	Great Lakes Wine Company	71-9-01145	Item 168.19 $1.12 per gal. plus Int. Rev. tax of $10.50 per gal. Item 168.25 $0.90 per gal. plus Int. Rev. tax of $10.50 per gal.	Duties and taxes improperly assessed on certain quantities of merchandise which never entered U.S.	Agreed statement of facts	Chicago Shortage of alcoholic beverages (69.6 gals. brandy, entry, 3261; 2.99 gals. brandy, entry 2891; 19.9 gals. liquor, entry 4241)
P75/315	Richardson, J. May 20, 1975	Amplifone Corporation	70/31200, etc.	Item 682.10 12.5% Item 682.07 11%, 10% or 8.5% Item 682.60 12% without allowance under item 807.00	As assessed, with allowance under item 807.00 for cost or value of articles marked "A" (fabricated components, the product of U.S.) on invoices	General Instrument Corporation v. U.S. (C.D. 4507; C.A.D. 1128)	Chicago American goods returned (transformers and coils)
P75/316	Watson, J. May 20, 1975	Lakeshore Artificial Foliage Co. et al.	60/32060, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Merchandise in e.v. of plastic

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/317	Watson, J. May 20, 1975	Karl Schroff & Assoc., Inc.	67/77611, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc., in c.v. of plastic
P75/318	Maletz, J. May 20, 1975	Mego Corp.	70/26464	Item 737.90 28% (as an entirety)	Item 737.90 28% (wagon portion) Item 737.55 16.5% (block portion) Appraisement erroneous and invalid; liquidation premature and void; entry returned to regional commissioner for administrative action	Judgment on the pleadings	New York #179 Wagon of Educational Building Blocks; not an entirety

P75/319	Boe, C.J. May 21, 1975	Dejur Amsco Corporation	67/42190, etc.	Item 684.70 15% (items marked "A" and "B")	Item 685.40 11.5% (items marked "A" and "B")	Agreed statement of facts (items marked "A" and "B")	New York Earphones; parts of dictation recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B")
P75/320	Boe, C.J. May 21, 1975	Dejur Amsco Corporation	68/13744, etc.	Item 684.70 15%, 13% or 10%	Item 685.40 11.5%, 10% or 8%	Agreed statement of facts	New York Earphones; parts of dictation, recording and transcribing machines
P75/321	Boe, C.J. May 21, 1975	S. Hiller & Co.	67/23847	Item 653.40 19%	Protest premature; appraisement and liquidation not in accordance with law; protest dismissed; regional commissioner to take appropriate action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	San Francisco High intensity lamps with bulbs; not entireties
P75/322	Watson, J. May 21, 1975	Adler Enterprises, Inc.	69/32068, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastic (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/323	Watson, J. May 21, 1975	Artistic Creations, Inc., et al.	67/7523, etc.	Item 748.20 26.5%, 25%, 23.5% or 28%	Item 774.60 15%, 13.5%, 11.5% or 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Ferns in c.v. of plastic
P75/324	Watson, J. May 21, 1975	Floral Trading Corp. et al.	69/16488, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc., in c.v. of plastic (items marked "A") Ferns in c.v. of plastic (items marked "B")
P75/325	Watson, J. May 21, 1975	Keen Industries, Inc.	70/24249, etc.	Item 748.20 28%, 26.5% or 25%	Item 774.60 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc., in c.v. of plastic
P75/326	Boe, C. J. May 22, 1975	Mitsubishi International Corp. et al.	69/12638, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	Agreed statements of facts	Chicago Earphones (not headphones) of a type chiefly used with radios
P75/327	Boe, C.J. May 22, 1975	Montgomery Ward & Co. et al.	70/23150, etc.	Item 684.70 13% or 12%	Item 688.25 11% or 10%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

P75/328	Watson, J. May 22, 1975	Hub Floral Corporation	71-12-02039	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Boston Artificial flowers, etc., in c.v. of plastic
P75/329	Watson, J. May 22, 1975	Import Sales et al.	66/75799, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/330	Boe, C.J. May 27, 1975	Arrow Trading Co. et al	68/13353, etc.	Item 653.40 19% (items marked "A" and "B")	Protests premature; appraisements and liquidations not in accordance with law; protests dismissed; regional commissioner to take appropriate action (items marked "A" and "B")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A" and "B")	New York High-intensity lamps with bulbs (items marked "A"); desk lamps with bulbs (items marked "B"); not entireties

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P75/331	Watson, J. May 27, 1975	Price Enterprises, Inc.	66/30811, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/332	Watson, J. May 27, 1975	Princess Ribbon Corp.	67/46145, etc.	Item 748.20 28%, 26.5% or 25.5%	Item 774.60 17%, 15% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Plastic artificial flowers, etc.
P75/333	Newman, J. May 27, 1975	Mobilite, Inc.	67/49262, etc.	Item 653.40 or 653.39 19%	Liquidations void; protests premature and dismissed; entries returned to regional commissioner for appropriate administrative action	Mobilite, Inc. v. U.S. (C.D. 4478)	New York Fluorescent and high intensity lamps and bulbs imported together; not entireties

P75/334	Watson, J. May 28, 1975	Angray Merchandising Corp.	67-330-S, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/335	Watson, J. May 28, 1975	City Products Corp.	72-7-01642	Item 748.20 26.5% or 23.5%	Item 774.60 15% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial flowers, etc., in c.v. of plastic
P75/336	Watson, J. May 28, 1975	M. E. Duncan Co., etc.	69/3605, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Articles of plastics
P75/337	Watson, J. May 28, 1975	Hulsizers et al	68/124-S, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovts, Inc. v. U.S. (C.D. 4396)	San Francisco Articles of plastics
P75/338	Watson, J. May 28, 1975	B. A. McKenzie & Co.	70/15740, etc.	Item 748.20 26.5% or 25%	Item 774.60 15% or 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Tacoma (Seattle) Articles of plastics

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/339	Watson, J. May 28, 1975	Pier I Imports of Texas, Inc.	70/31479	Item 748.20 25%	Item 774.60 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Houston Artificial flowers, etc., in c.v. of plastics
P75/340	Watson, J. May 28, 1975	Tapscott's, Inc.	71-10-01465, etc.	Item 748.20 25%, 23.5%, 22% or 21%	Item 774.60 13.5%, 11.5%, 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco; Seattle Articles of plastic
P75/341	Re, J. May 28, 1975	Andrew Fisher Cycle Co., Inc.	73-8-02427	Item 732.36 15%	Item 646.56 0.1¢ per lb.	Agreed statement of facts	New York Axle and spindle nuts
P75/342	Boe, C.J. May 29, 1975	Allied International, American Eagle Corp.	74-6-01525	Item 657.20 9.5%	Item 646.56 0.1¢ per lb.	Jacobson Mfg. Co., Inc. v. U.S. (Abs. P74/922)	Miami Washered-lock-nuts (pek nuts)
P75/343	Boe, C.J. May 29, 1975	Morris Friedman & Co., Inc.	73-7-01707	Item 737.90 21% Item 737.20 12.5% Item 737.35 10.5%	Item 206.97 10% and 8%	Agreed statement of facts	Philadelphia Mushroom and lady bug magnets

P75/344	Boe, C.J. May 29, 1975	The May Dept. Stores Co.	66/38219, etc.	Item 654.00 or 653.39 19%	Appraisement and liquidation not in accordance with law and void; protests premature and dismissed; entries returned to regional commissioner for administrative action	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	New York Lamps imported with electrical light bulbs (electric filament bulbs or electric fluorescent bulbs); not entireties
P75/345	Boe, C.J. May 29, 1975	Sterling Novelty Products	72-4-00926	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. v. U.S. (C.D. 4487)	New York Articles in c.v. of plastic
P75/346	Ford, J. May 29, 1975	Sanyei New York Corporation	66/68160, etc.	Item 684.70 15% or 13%	Item 685.22 or 685.25 12.5% or 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones
P75/347	Landis, J. May 29, 1975	Montgomery Ward and Company, Inc.	72-11-02256	Item 725.47 17%	Item 726.80 11.5%	Montgomery Ward & Co. v. U.S. (C.A.D. 1131)	Chicago Musical instrument parts
P75/348	Watson, J. May 29, 1975	D. Arnold Associates	67/23566, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (item marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/349	Watson, J. May 29, 1975	Dolliff and Company, Inc.	72-9-02005	Item 653.39 19%	Item 683.65 5.5%	Judgment on the pleadings Warshawsky & Company v. U.S. (C.D. 4410)	Boston Certain fog lamps and driving lamps listed on decision and judgment
P75/350	Watson, J. May 29, 1975	Powers Flowers, Inc.	69/31993	Item 748.20 26.5%	Item 774.60 15%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Francisco Artificial ferns in c.v. of plastics
P75/351	Watson, J. May 29, 1975	Tapscott's	67/84022-S, etc.	Item 748.20 28%, 26.5%, 25% or 23.5% (items marked "A" and "B")	Item 774.60 17%, 15%, 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/352	Watson, J. May 29, 1975	Zunold Trading Corp. et al.	66/77997, etc.	Item 784.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Fruits, vegetables and ferns in c.v. of plastic
P75/353	Newman, J. May 29, 1975	Fedtro, Inc.	69/52437	Item 682.60 12%	Item 688.40 9%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers

P75/354	Re, J. May 29, 1975	Venetianaire Corp. of America	67/75146, etc.	Item 772.15 17%	Item 772.35 12.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress covers, pillow covers, protectors
P75/355	Watson, J. June 4, 1975	The American Import Co.	67/41587, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/356	Watson, J. June 4, 1975	W. J. Byrnes & Co.	67/23913	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics
P75/357	Watson, J. June 4, 1975	Cost Plus, Inc.	69/20965	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics
P75/358	Watson, J. June 4, 1975	Lo Forti Imports	68/64340, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/359	Watson, J. June 4, 1975	Paradise Products	67/49975, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/360	Watson, J. June 4, 1975	Pike Sales Co.	69/5458	Item 748.20 28%	Item 774.60 17%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Antonio (Laredo) Articles of plastics
P75/361	Newman, J. June 4, 1975	Fedtro, Inc.	67/47544	Item 682.60 15%	Item 688.40 11.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers
P75/362	Boe, C. J. June 5, 1975	E Z Em Corp.	73-7-01850, etc.	Item 709.27 18%	Item 709.09 6%	Agreed statement of facts	New York Rubber balloon cuffs "flexi-cuff series"
P75/363	Boe, C. J. June 5, 1975	E. J. Pager, Inc., et al.	68/64329, etc.	Item 382.04 42.5%	Item 741.50 17.5%, 20% or 22.5%	Agreed statements of facts	New York Articles of wearing apparel fully covered with beads, bugles or spangles

P75/364	Ford, J. June 5, 1975	Sony Corporation of America et al.	68/9656, etc.	Item 684.70 15%, 13%, 12% and 10%	Item 685.25 12.5%, 11%, 10% and 8.5%	Transamerican Electronics Corp. v. U.S. (C.D. 4405)	New York Earphones
P75/365	Watson, J. June 5, 1975	C. B. Smith Co., Inc.	67/18626, etc.	Item 207.00 16 ⅔%	Item 202.53 5%	C. B. Smith Co. v. U.S. (C.D. 3991)	Los Angeles Hardwood
P75/366	Watson, J. June 5, 1975	Star Sales of Dallas, Division of Star Ribbons, Inc., et al.	70/8003, etc.	Item 748.20 25% or 23.5% (items marked "A" and "B")	Item 774.60 13.5% or 11.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A")	Dallas (Houston) Artificial flowers, etc., in c.v. of plastics (items marked "A")
						First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Articles of plastics (items marked "B")
P75/367	Watson, J. June 5, 1975	Teters Floral Products Co.	70/11473, etc.	Item 748.20 25%	Item 774.60 13.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Houston Articles of plastics
P75/368	Maletz, J. June 5, 1975	Florsheim Shoe Co., Div. of Interco, Inc.	73-9-02510	Item 121.30 9.5% or 9%	Item 121.57 6% or 5%	Florsheim Shoe Company, Division of Interco, Inc. v. U.S. (C.D. 4495)	Chicago Buffalo calf leather
P75/369	Newman, J. June 5, 1975	Fedtro, Inc.	70/14442, etc.	Item 682.60 12% or 12%	Item 688.40 10% or 9%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery chargers

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/370	Ford, J. June 9, 1975	Cutlers International, Ltd., et al.	65/8926, etc.	Par. 353 15% (items marked "A") Par. 1531 or 1531/1559(a) 20% (items marked "B")	Par. 353 13¾%, 12½% or 11½% (items marked "A") Par. 353 12½% (items marked "B")	Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Cases imported with radios (entireties) (items marked "B")
P75/371	Richardson, J. June 9, 1975	G. Joannou Cycle Co., Inc., et al.	72-5-01166, etc.	Item 732.36 21%	Item 642.20 13%	Agreed statement of facts	New York Cables, fitted with fittings, or made up into articles, in c.v. of wire
P75/372	Richardson, J. June 9, 1975	F. W. Myers & Co., Inc.	74-4-00976	Item 692.35 5.5%	Item 692.30 Free of duty	U.S. v. F.W. Myers & Co., Inc. (C.A.D. 1097)	Champlain (Ogdensburg) Tractors and parts of tractors
P75/373	Richardson, J. June 9, 1975	United China & Glass Co.	67/71128	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New Orleans Electric bird cages, electric carts or carriages, or similar designations
P75/374	Watson, J. June 9, 1975	Chadwick-Miller Importers, Inc., et al.	70/41655, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Boston Artificial flowers, etc., in c.v. of plastic

P75/375	Watson, J. June 9, 1975	City Products Corporation	67/46360	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Houston Artificial flowers, etc., in c.v. of plastic
P75/376	Re, J. June 9, 1975	C. B. Smith Co., Inc.	70/28400, etc.	Item 727.40 15% and 13.5%	Item 202.53 4% and 3%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	Los Angeles Wood drawer sides, backs, etc.
P75/377	Ford, J. June 11, 1975	Kanematsu New York, Inc., et al.	66/15895, etc.	Item 684.70 15% or 13% (items marked "A") Item 791.65 20% (items marked "B")	Items 685.22 and 685.25 12.5% and 11% (items marked "A") Item 685.22 12.5% (items marked "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Cases for transistor radios (items marked "B")
P75/378	Watson, J. June 11, 1975	American Express et al.	68/6689, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	Los Angeles Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastic (items marked "B")
P75/379	Ford, J. June 16, 1975	American Sanitary Rag Company et al.	66/45419, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios

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				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/380	Ford, J. June 18, 1975	Sanyo Electric, Inc., et al.	68/62339, etc.	Item 684.70 or 685.50 13% or 12%	Item 685.25 11% or 10%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	San Francisco Earphones, chiefly used as parts of radios, essential to function of radio
P75/381	Watson, J. June 18, 1975	L. Reinganum & Sons	72-7-01644	Item 748.20 22%	Item 774.60 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc. in c.v. of plastic
P75/382	Watson, J. June 18, 1975	Reliance Trading Corp. of Ill. et al.	68/33534, etc.	Item 748.20 28%, 26.5%, 25%	Item 774.60 17%, 15%, 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Chicago Artificial flowers, etc., in c.v. of plastic
P75/383	Maletz, J. June 18, 1975	Perkin-Elmer Corporation	74-7-01915	Item 708.78 15%	Item 851.60 Free of duty	Agreed statement of facts	Chicago Instruments and apparatus entered for use of non-profit institutions established for educational or scientific purposes

P75/384	Richardson, J. June 19, 1975	Chrysler Corp.	70/3468, etc.	Item 696.15 12%, 10.5% or 9.5%	Item 680.45 9%, 8% or 7%	Eaton Manufacturing Co. et al. v. U.S. (C.D. 4207, rev'd and remanded C.A.D. 1076, remanded C.D. 4571)	New York Outboard drives with or without other words of description and their parts
P75/385	Watson, J. June 19, 1975	A. A. Importing, Inc.	72-2-00418	Item 748.20 23.5% or 22%	Item 774.60 11.5% or 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Articles of plastic
P75/386	Watson, J. June 19, 1975	Albert Kessler & Co.	68/43256	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics
P75/387	Watson, J. June 19, 1975	National Handicraft Institute	67/308, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/388	Watson, J. June 19, 1975	National Potteries	67/41345–S, etc.	Item 748.20 28% (items marked "A" and "B")	Item 774.60 17% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/389	Watson, J. June 19, 1975	Wood, Niebuhr & Co. D. Arnold Assoc., Inc.	67/54172–S, etc.	Item 748.20 28%, 26.5% or 25% (items marked "A" and "B")	Item 774.60 17%, 15% or 13.5% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	New York Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/300	Maletz, J. June 19, 1975	Nikko Boeki Hong Kong, Ltd.	73–6–01634	Item 688.40 8%	Item 688.40 6.5%	Agreed statement of facts	New York Lamp/clock radios with movements (entry 196211); movements assessed under item 720.02 at 45¢ each

P75/391	Richardson, J. June 24, 1975	Campana Art Products, Inc.	68/47744	Item 545.67 24% (as an entirety)	Plaintiff's motion for summary judgment granted; defendant's motion for extension of time to respond thereto denied; merchandise ordered severed for classification purposes—glass kerosene lamp portion under item 545.67 at 24% and Christmas ring portion under item 774.60 at 17%; liquidations null and void since separate appraisements were not made; protest untimely and dismissed; entries remanded to regional commissioner for reliquidation	Summary judgment Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (Christmas flower ring portion)	Philadelphia Kerosene lamp w. Christmas flower ring
P75/392	Richardson, J. June 24, 1975	Chrysler Corp.	71-9-01216, etc.	Item 606.15 8%	Item 680.45 6%	Eaton Manufacturing Co. et al. v. U.S. (C.D. 4207, rev'd and remanded C.A.D. 1076, remanded C.D. 4571)	New York Outboard drives with or without other words of description and their parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par.or Item No. and Rate	Par. or Item No. and Rate		
P75/393	Richardson, J. June 24, 1975	National Silver Company	65/19559, etc.	Item 651.75 At various ad valorem equivalents set out in schedule, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, etc.
P75/394	Watson, J. June 24, 1975	Hupp's Tokyo Traders	60/75699, etc.	Item 748.20 28% or 26.5% (items marked "A" and "B")	Item 774.60 17% or 15% (items marked "A" and "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") First American Artificial Flowers, Inc. v. U.S. (C.D. 4185); Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked "B")	San Francisco Artificial flowers, etc., in c.v. of plastics (items marked "A") Articles of plastics (items marked "B")
P75/395	Watson, J. June 24, 1975	International Artware Corp.	67/23178, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc., in c.v. of plastics

P75/396	Watson, J. June 24, 1975	Westwood Import Co., Inc.	67/14263	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Philadelphia Merchandise in c.v. of plastic
P75/397	Newman, J. June 24, 1975	Fedtro, Inc.	68/60947, etc.	Item 682.60 15%, 13% and 9%	Item 688.40 11.5%, 10% and 6.5%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi-purpose battery chargers
P75/398	Watson, J. June 26, 1975	W. J. Byrnes & Co.	73-2-00436	Item 748.20 23.5%, 22% or 21%	Item 774.60 11.5%, 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Articles of plastics
P75/399	Watson, J. June 26, 1975	G. R. Kirk Company et al.	66/30781, etc.	Item 748.20 28%, 26.5%, 25% or 23.5%	Item 774.60 17%, 15%, 13.5% or 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Seattle Artificial flowers, etc., in c.v. of plastics
P75/400	Watson, J. June 26, 1975	Queen City Wreath Co.	73-12-03466	Item 748.20 23.5% and 21%	Item 774.60 11.5% and 8.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Cincinnati (Cleveland) Artificial ferns, etc.
P75/401	Watson, J. June 26, 1975	Teters Floral Products, Inc.	74-1-00090, etc.	Item 748.20 22% or 21%	Item 774.60 10% or 8.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Articles of plastics

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/402	Watson, J. June 26, 1975	Volkswagen of America, Inc.	67/18283, etc.	Item 409.00 7¢ per lb. plus 45%	Item 405.25 2.8¢ per lb. plus 18%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Portland, Oreg. Benzenoid alkyd resin paints
P75/403	Maletz, J. June 26, 1975	Dejur Amsco Corp.	66/68366, etc.	Item 684.70 15% (items marked "A", "B" and "C")	Item 685.40 11.5% (items marked "A", "B" and "C")	Agreed statement of facts	New York Earphones; parts of dictation, recording and transcribing machines (items marked "A") Extensions; parts of earphones used as parts of such machines (items marked "B") Microphones, loudspeakers; parts of such machines (items marked "C")
P75/404	Newman, J. June 26, 1975	Marlin Radio Corp.	74-9-02550	Item 685.30 6.5%	Item 678.50 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York Transistor AM/FM/MPX radios with 8 track deck

ABSTRACTS OF CUSTOMS COURT DECISIONS

Reappraisements

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/1	Watson, J. January 7, 1975	Westinghouse Electric Corporation	R69/11482	Constructed value	Bicycle lamp radio: $3.77 net, packed Batteries: $0.08 net, packed	Agreed statement of facts	New York Bicycle lamp radios and batteries
R75/2	Re, J. January 7, 1975	Bruce Duncan Co., Inc., et al.	R59/2806, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/3	Re, J. January 7, 1975	Pan American Trade Development Corp. et al.	R58/12196, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R75/4	Re, J. January 7, 1975	Toyomenka, Inc., et al.	R58/28553, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/5	Richardson, J. January 9, 1975	Ross Electronics	71-12-02034	Constructed value	Set forth on schedule A attached to decision and judgment	Agreed statement of facts	Chicago Radio chassis, transistor radio sets, and radios (with or without accessories)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/6	Newman, J. January 9, 1975	Island Woods International	74-6-01562	Export value: Invoiced values, net packed	Not stated	Judson Sheldon International Corporation et al. v. U.S. (A.R.D. 295)	Seattle Philippine plywood
R75/7	Re, J. January 9, 1975	Wilmington Shipping Co.	R61/6998, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood
R75/8	Richardson, J. January 13, 1975	Mitsubishi International Corp.	R63/801, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for the respective pattern numbers and sizes listed therein, on the dates of exportation as shown, per pair, net packed	Agreed statement of facts	Baltimore Footwear
R75/9	Re, J. January 13, 1975	Wood Mosaic Industries	R61/4169, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R75/10	Richardson, J. January 22, 1975	A & A Trading Corp.	R70/2556, etc.	Constructed value	For each imported article, net packed, are those listed on schedule, attached to decision and judgment, in column designated "Claimed Values"	Agreed statement of facts	Boston Various radios, some imported with earphones and batteries

R75/11	Watson, J. January 22, 1975	J. L. Wood	R63/8918, etc.	Export value	$0.455 per pound	Agreed statement of facts	Pembina MCPA Isopropyl - 50% (30% Isobutyl, 20% n-butyl ester techn)
R75/12	Watson, J. January 27, 1975	A & A Trading Corp.	R61/6640, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All articles imported under the subject entries, which were appraised at values including an amount for commission
R75/13	Watson, J. January 27, 1975	A & A Trading Corp.	R63/6348, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All articles imported under subject entries, which were appraised at values including an amount for commission
R75/14	Watson, J. January 27, 1975	A & A Trading Corp.	R63/7726, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All articles imported under subject entries, which were appraised at values including an amount for commission
R75/15	Watson, J. January 27, 1975	Corrigan Dispatch Co. et al.	R65/9502, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	Laredo Phonograph records
R75/16	Watson, J. January 27, 1975	Davies, Turner & Company et al.	R65/17650, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	Chicago Phonograph records

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/17	Watson, J. January 28, 1975	A & A Trading Corp.	R70/2575, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All articles imported under subject entries, which were appraised at values including an amount for commission
R75/18	Watson, J. January 28, 1975	RCA Victor Record Div. of Radio Corporation of America et al.	R65/15868, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	San Francisco Phonograph records
R75/19	Watson, J. January 28, 1975	RCA Victor Record Div. et al.	R65/17314, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	New York Phonograph records
R75/20	Richardson, J. February 10, 1975	F & D Trading Corp.	R66/25067	Cost of Production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed values (all in Deutsch Mark)" for Volkswagen Model Nos. 113, 311, 361	Agreed statement of facts	Los Angeles Various model Volkswagen automobiles
R75/21	Watson, J. February 12, 1975	A. Toro et al.	R65/11223, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	Miami Phonograph records

R75/22	Ford, J. February 13, 1975	Capitol Stampings Corporation	73-9-02504	Cost of production: Equal to invoiced unit prices, less ocean freight	Not stated	Agreed statement of facts	Chicago IKS ball bearings
R75/23	Watson, J. February 13, 1975	A & A Trading Corp.	R63/10033, etc.	Export value: Appraised values less amounts described as the "commission"	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston All merchandise imported under subject entries
R75/24	Re, J. February 13, 1975	William H. Masson, Inc.	R60/14455	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R75/25	Ford, J. February 19, 1975	Mitsubishi International Corp.	R60/22869, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Boston Footwear
R75/26	Ford, J. February 19, 1975	J. M. Rodgers Co., Inc.	R62/2375, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (each)"	Agreed statement of facts	New York Various articles of footwear
R75/27	Ford, J. February 24, 1975	Morris Friedman, a/c Sumitomo Shoji, New York	R62/6689, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	Philadelphia Various articles of footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R57/28	Ford, J. February 24, 1975	J. M. Rodgers Co., Inc.	R61/14290, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear
R75/29	Ford, J. February 24, 1975	J. M. Rodgers Co., Inc.	R61/22078, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear
R75/30	Ford, J. February 24, 1975	J. M. Rodgers Co., Inc.	R62/112, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear
R75/31	Ford, J. February 24, 1975	J. M. Rodgers Co., Inc.	R62/533, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear
R75/32	Ford, J. February 24, 1975	J. M. Rodgers Co., Inc.	R62/14369, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Various articles of footwear

R75/33	Ford, J. February 25, 1975	Mitsubishi International Corp.	R60/22867, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Boston Footwear
R75/34	Ford, J. March 3, 1975	Mitsui & Co. (U.S.A.) Inc.	R68/11323	Constructed value	As set forth on schedule A, attached to decision and judgment	Agreed statement of facts	New York Transistor radios with accessories
R75/35	Ford, J. March 10, 1975	RCA Corporation	72-12-02573	Constructed value	Transistor radios: $11.7884, Models RZ M170A, RZM170E, RZM170R, each, net packed; $6.884, Models RZM151E, RZM 151T, each, net packed Earphones: $.07 (5 models listed above), each, net packed Batteries: $.1320 (first 3 models listed above), each, net packed; $.12 (set of six) (last 2 models listed above), each. net packed	Judgment on the pleadings	Los Angeles Transistor radios imported together with earphones and batteries

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/36	Watson, J. March 12, 1975	A & A Trading Corp.	73-2-00620	Export value: Appraised values less the amounts described as the "Commission" (except for merchandise on schedule B, attached to decision and judgment) Constructed Value: For each imported article, net packed, are those listed on schedule B in column designated "Claimed Values"	Listed on schedule B for merchandise covered thereby	A & A Trading Corp. v. U.S. (C.D. 4472) (except for merchandise on schedule B) Agreed statement of facts (merchandise on schedule B)	Seattle All articles imported under subject entries (except for merchandise on schedule B) Various radios some imported with earphones and batteries (on schedule B)
R75/37	Maletz, J. March 12, 1975	Ted L. Rausch Co., a/c Vicki Enterprises, Inc.	R67/10730, etc.	Export value	$2.12 per piece, net, packed	Vicki Enterprises, Inc., et al. v. U.S. (R.D. 11750, aff'd A.R.D. 302, aff'd C.A.D. 1125)	San Francisco Field glasses
R75/38	Maletz, J. March 12, 1975	Vicki Enterprises, Inc.	R69/10012	Export value	$2.25 per piece, net, packed	Vicki Enterprises, Inc., et al. v. U.S. (R.D. 11750, aff'd A.R.D. 302, aff'd C.A.D. 1125)	New York Field glasses
R75/39	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/3063	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Wilmington Footwear

R75/40	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/5591, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New Orleans Footwear
R75/41	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/12342, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Philadelphia Footwear
R75/42	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/20009, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear
R75/43	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/21467, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Boston Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/44	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/23365	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Galveston Footwear
R75/45	Landis, J. March 17, 1975	Mitsubishi International Corp.	R61/23373, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Houston Footwear
R75/46	Landis, J. March 17, 1975	Mitsubishi International Corp.	R62/6883	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Baltimore Footwear

R74/47	Landis, J. March 17, 1975	Mitsubishi International Corp.	R62/6889	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Baltimore Footwear
R75/48	Landis, J. March 17, 1975	Mitsubishi International Corp	R62/9783	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear
R75/49	Landis, J. March 17, 1975	Mitsubishi International Corp.	R65/2370	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Charleston Footwear
R75/50	Landis, J. March 18, 1975	Mitsubishi International Corp.	R61/348, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/51	Landis, J. March 18, 1975	Mitsubishi International Corp.	R61/4348, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Boston Footwear
R75/52	Landis, J. March 18, 1975	Mitsubishi International Corp.	R62/798, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear
R75/53	Landis, J. March 18, 1975	Mitsubishi International Corp.	R62/1510, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear

R75/54	Landis, J. March 18, 1975	Mitsubishi International Corp.	R62/4458, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Miami Footwear
R75/55	Landis, J. March 18, 1975	Mitsubishi International Corp.	R62/13517	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Philadelphia Footwear
R75/56	Landis, J. March 25, 1975	Mitsubishi International Corp.	R61/7012, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear
R75/57	Landis, J. March 25, 1975	Mitsubishi International Corp.	R61/21146, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/58	Landis, J. March 25, 1975	Mitsubishi International Corp.	R62/6886, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Baltimore Footwear
R75/59	Landis, J. March 25, 1975	Mitsubishi International Corp.	R62/7466	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New Orleans Footwear
R75/60	Landis, J. March 25, 1975	Mitsubishi International Corp.	R62/9750, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear

R75/61	Landis, J. March 25, 1975	Mitsubishi International Corp.	R62/10862, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Boston Footwear
R75/62	Landis, J. March 25, 1975	Mitsubishi International Corp.	R63/438, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts.	New York Footwear
R75/63	Landis, J. March 25, 1975	Mitsubishi International Corp.	R63/1301	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts.	Savannah Footwear
R75/64	Watson, J. March 25, 1975	A & A Trading Corp.	74-3-00620	Export value: Appraised values less the proportionate part of the buying commission paid to A & A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	San Francisco All merchandise imported under subject entries

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/65	Landis, J. March 26, 1975	Frank P. Dow Co., Inc., a/c Sumitomo Shoji, New York	R62/373	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	San Francisco Footwear
R75/66	Landis, J. March 26, 1975	Mitsubishi International Corp.	R61/6281, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New Orleans Footwear
R75/67	Landis, J. March 26, 1975	Mitsubishi International Corp.	R61/23366	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Galveston Footwear
R75/68	Landis, J. March 26, 1975	Mitsubishi International Corp.	R62/4540	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear

R75/69	Landis, J. March 26, 1975	Mitsubishi International Corp.	R62/7632, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Savannah Footwear
R75/70	Landis, J. March 26, 1975	Mitsubishi International Corp.	R63/4036, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear
R75/71	Landis, J. March 26, 1975	Mitsubishi International Corp.	R65/2360	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Charleston Footwear
R75/72	Landis, J. March 26, 1975	Stone & Downer Co.	R62/8623, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	Boston Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/73	Landis, J. March 27, 1975	A & A Trading Corp.	R70/406, etc.	Constructed value	For each imported article, net packed, are listed on schedule, attached to decision and judgment, in column designated "Claimed Values"	Agreed statement of facts	Los Angeles Radios imported together with earphones and batteries
R75/74	Landis, J. March 27, 1975	Aro Corporation	73-7-01972	Constructed value	For each unit of merchandise is 133.43% of unit value set forth in column 4 of Special Customs Invoice, Form 5515	Agreed statement of facts	Detroit Various parts of pneumatic hand tools
R75/75	Landis, J. March 27, 1975	Mitsubishi International Corp.	R62/7992, etc.	American selling price	As shown on schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Baltimore Footwear
R75/76	Landis, J. March 27, 1975	Mitsubishi International Corp.	R62/9931	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number	Agreed statement of facts	New York Footwear

					and sizes listed therein, on dates of exportation as shown, per pair, net packed		
R75/77	Landis, J. March 27, 1975	Mitsubishi International Corp.	R63/3401, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Philadelphia Footwear
R75/78	Landis, J. April 2, 1975	Mitsubishi International Corp.	R61/11720, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear
R75/79	Landis, J. April 2, 1975	Mitsubishi International Corp.	R62/7951, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/80	Landis, J. April 2, 1975	Nevitt Import Corp.	73-5-01192	Export value: Invoiced unit values less proportionate shares of the $2,510.90 ocean freight and insurance charges	Not stated	Agreed statement of facts	New York Shirts with ties
R75/81	Watson, J. April 2, 1975	A & A Trading Corp.	72-2-00312, etc.	Export value: Appraised values less proportionate part of buying commission paid to A & A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Los Angeles All merchandise imported under subject entries
R75/82	Richardson, J. April 3, 1975	United States v. Anaconda Wire & Cable Co.	R66/4280	Export value	$13.16 (entry 2216) and $13.00 (entry 2646) Mexican pesos per kilo, packed	Agreed statement of facts	El Paso Soft drawn copper cable, 37/w, 500 MCM
R75/83	Landis, J. April 3, 1975	Lasco Rubber Co.	R63/814	American selling price	As set forth in schedule B, attached to decision and judgment	Agreed statement of facts	Baltimore Footwear
R75/84	Landis, J. April 3, 1975	Mitsubishi International Corp.	R61/1419, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, not packed	Agreed statement of facts	New York Footwear

R75/85	Landis, J. April 3, 1975	Mitsubishi International Corp.	R61/11824, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Philadelphia Footwear
R75/86	Landis, J. April 3, 1975	Mitsubishi International Corp.	R61/15946, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Houston Footwear
R75/87	Landis, J. April 3, 1975	Stone & Downer Co.	R61/10471, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	Boston Footwear
R75/88	Watson, J. April 3, 1975	A & A Trading Corp.	74-3-00615	Export value: Appraised values less proportionate part of buying commission paid to A&A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	New York All merchandise imported under subject entries

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/89	Maletz, J. April 8, 1975–decided on remand [A.R.D. 286]	Karl Schroff & Associates, Inc.	R66/19895	Export value on an f.o.b. basis (as appraised)	Not stated	Judgment order on remand: appraisement affirmed; appeal for reappraisement dismissed	Chicago 29 cartons of motors
R75/90	Boe, C.J. April 9, 1975	Morris Friedman	R62/1157	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	Philadelphia Footwear
R75/91	Boe, C.J. April 9, 1975	Mitsubishi International Corp.	R62/7633, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Savannah Footwear
R75/92	Boe, C.J. April 9, 1975	J. M. Rodgers Co., Inc.	R60/16257, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear

R75/93	Landis, J. April 9, 1975	Mitsubishi International Corp.	R62/12430, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New Orleans Footwear
R75/94	Landis, J. April 9, 1975	Mitsubishi International Corp.	R62/13903	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Savannah Footwear
R75/95	Boe, C.J. April 15, 1975	Mitsubishi International Corp.	R62/2749	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	New York Footwear
R75/96	Boe, C.J. April 15, 1975	Mitsubishi International Corp.	R62/12788, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/97	Boe, C.J. April 15, 1975	New York Merchandise Co., Inc.	R61/18424	American selling price	Appropriate valuelisted on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Honolulu Footwear
R75/98	Boe, C.J. April 16, 1975	Larry B. Watson, a/c Bankor Trading Co.	73-1-00001	Export value: At invoiced unit values, net packed	Not stated	Judgment on the pleadings U.S. v. Continental Forwarding Co., Inc., et al. (C.A.D. 1063)	Los Angeles Wigs, hairpieces, etc.
R75/99	Re, J. April 16, 1975	Del Valle, Kahman Co.	R60/21059, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R75/100	Boe, C.J. April 17, 1975	J. M. Rodgers Co., Inc.	R60/17653, etc.	American selling price	Appropriate valuelisted on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/101	Watson, J. April 17, 1975	Radio Corp. of America et al.	R65/10603, etc.	Constructed value	As set forth in schedule C, attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	Los Angeles Phonograph records

R75/102	Boe, C.J. April 22, 1975	Mitsubishi International Corp.	R61/17107, etc.	American selling price	As shown in schedule B, attached to decision and judgment, for respective pattern numbers and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	San Francisco Footwear
R75/103	Boe, C.J. April 22, 1975	Oriental Trading Co.	R62/14009	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/104	Re, J. April 22, 1975	Pacific Wood Products Co.	R61/9438	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/105	Boe, C.J. April 29, 1975	Mitsubishi International Corp.	R62/5137	American selling price	As shown in schedule B, attached to decision and judgment, for pattern number and sizes listed therein, on dates of exportation as shown, per pair, net packed	Agreed statement of facts	Miami Footwear
R75/106	Boe, C.J. April 29, 1975	F. W. Myers & Co., Inc.	73-2-00462	Export value: Invoice unit value	Not stated	Agreed statement of facts	New York Record changers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/107	Watson, J. April 29, 1975	A & A Trading Corp.	72-2-00310, etc.	Export value: Appraised values less proportionate part of buying commission paid to A & A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D.4472)	San Francisco All merchandise imported under subject entries
R75/108	Watson, J. April 29, 1975	A & A Trading Corp.	73-3-00786, etc.	Export value: Appraised values less the proportionate part of the buying commission paid to A & A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D.4472)	Los Angeles All merchandise imported under subject entries
R75/109	Richardson, J. April 30, 1975	Drexel Motors, Inc.	72-2-00815	Cost of production	Appropriate value listed on schedules A and B, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Baltimore; New York Various model Volkswagen automobiles
R75/110	Richardson, J. April 30, 1975	F & D Trading Corp.	R65/2256, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Charleston, S.C. Various model Volkswagen automobiles

R75/111	Watson, J. April 30, 1975	A & A Trading Corp.	73-7-01958, etc.	Export value: Appraised values less the proportionate part of the buying commission paid to A & A Japan, Ltd.	Not stated	A & A Trading Corp. v. U.S. (C.D. 4472)	Seattle All merchandise imported under subject entries
R75/112	Re, J. April 30, 1975	American Customs Brokg Co. et al.	R59/17081, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Honolulu Japanese plywood
R75/113	Re, J. April 30, 1975	D. C. Andrews of Md., Inc., et al.	R59/7609, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R75/114	Re, J. April 30, 1975	Industries Unlimited	R62/3109, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R75/115	Re, J. April 30, 1975	Pan Pacific Overseas Corp. et al.	R58/10795, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R75/116	Re, J. April 30, 1975	Wilmington Shipping Co.	R60/20124, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Wilmington, N.C. Japanese plywood
R75/117	Richardson, J. May 6, 1975	F & D Trading Corp.	R65/25298, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/118	Richardson, J. May 6, 1975	F & D Trading Corp.	R66/17841, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/119	Richardson, J. May 6, 1975	F & D Trading Corp.	R67/6044, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/120	Richardson, J. May 6, 1975	F & D Trading Corp.	R67/11607, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/121	Richardson, J. May 7, 1975	Rattancraft of California	R67/8503	Export value	$0.91 per piece, net packed	Judgment on the pleadings	Baltimore Bamboo articles

R75/122	Richardson, J. May 13, 1975	Drexel Motors, Inc.	R64/2439, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/123	Richardson, J. May 13, 1975	Drexel Motors, Inc.	R66/2063, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/124	Richardson, J. May 13, 1975	Drexel Motors, Inc.	R66/17939, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/125	Richardson, J. May 13, 1975	Drexel Motors, Inc.	R66/24447, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/126	Richardson, J. May 13, 1975	Drexel Motors, Inc.	R67/6781, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/127	Richardson, J. May 14, 1975	Bryn Mawr Small Cars, Inc.	R62/2565, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/128	Richardson, J. May 14, 1975	Drexel Motors, Inc.	R68/12827, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

R75/129	Richardson, J. May 14, 1975	F & D Trading Corp.	R66/2054, etc.	Cost of production	Appropriate value listed on schedule attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R75/130	Watson, J. May 14, 1975	S. Jackson & Son, McCandless, Inc., et al.	R65/13782, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	New Orleans Phonograph records
R75/131	Maletz, J. May 20, 1975	F. W. Myers & Co., Inc.	R65/15992	Export value	$8.49 (2"), $8.06 (1⅞"), and $7.55 (1¾") (all U.S. currency per 100' net packed)	U.S. v. F. W. Myers & Co., Inc. (C.A.D. 264) F. W. Myers & Co., Inc. v. U.S. (Abs. R73/39)	Detroit Steel tubing
R75/132	Boe, C. J. May 21, 1975	Mitsubishi International Corp.	R61/6479, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Each)"	Agreed statement of facts	New York Footwear
R75/133	Richardson, J. May 27, 1975	Drexel Motors, Inc.	R62/9553, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)", for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/134	Watson, J. June 5, 1975	First Chemical Products, Inc.	R70/8771	Merchandise appraised at $10.05 per kilogram, less 1%, net, packed; claimed dutiable on basis of American selling price at $6.50 per kilogram, net, packed	Held: Appraisement and liquidation null and void for failure of appropriate customs officials to give plaintiff statutory notice of appraisement after due request therefor; court papers returned to appropriate customs officials for further administrative action	Judgment on the pleadings	New York Sulfamethazine
R75/135	Landis, J. June 11, 1975	The A. W. Fenton Co., Inc.	R60/21645	Export value	15,015.65 Danish Kroner, net, packed	The A. W. Fenton Co., Inc. v. U.S. (R.D. 11755)	Cleveland "A.F. Response and Spectrum Recorder"
R75/136	Re, J. June 16, 1975	Atkins Kroll Co, Ltd., et al.	R59/2781, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/137	Re, J. June 16, 1975	Balfour, Guthrie & Co., Ltd.	R58/23596, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R75/138	Re, J. June 16, 1975	Charleston Overseas Forwarders, Inc.	R63/14899, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Japanese plywood

R75/139	Re, J. June 16, 1975	C. T. Takahashi & Co., Inc., et al.	284306-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R75/140	Re, J. June 16, 1975	H. Zwart & Co., Inc.	R64/18088, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/141	Re, J. June 17, 1975	Biddle Purchasing Co.	R60/10002	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/142	Re, J. June 17, 1975	Building Products, Co.	R58/3495, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/143	Re, J. June 17, 1975	Geo. S. Bush & Co., Inc., et al.	R60/6679, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/144	Re, J. June 17, 1975	Del Valle, Kahman & Co.	R61/53	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R75/145	Re, J. June 17, 1975	The East Asiatic Co., Inc.	R58/15108, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al (C.A.D. 927)	Los Angeles Japanese plywood
R75/146	Re, J. June 17, 1975	Export Pacific et al.	R60/2592, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R75/147	Re, J. June 17, 1975	Humphrey & Macgregor, Inc.	289107-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/148	Re, J. June 17, 1975	Pacific Wood Products Co.	R61/9219, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/149	Re, J. June 17, 1975	Samuel Shapiro & Co., Inc.	279208-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R75/150	Re, J. June 17, 1975	Toyomenka, Inc., et al.	R58/16054, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/151	Maletz, J. June 18, 1975	Oriental Trading Co.	R62/7017, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	San Francisco Footwear
R75/152	Maletz, J. June 19, 1975	Import Associates of America, Inc.	R63/3997, etc.	American selling price	Set forth under column "Unit Value Per Pair" on schedule A, attached to decision and judgment	Agreed statement of facts	New York Footwear
R75/153	Maletz, J. June 19, 1975	International Seaway Trading Corp.	R61/4807, etc.	American selling price	As set forth in schedule B, attached to decision and judgment	Agreed statement of facts	New York Footwear

R75/154	Maletz, J. June 19, 1975	New York Merchandise Co., Inc.	R61/22308, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	San Francisco Footwear
R75/155	Re, J. June 24, 1975	National Carloading Corp.	R58/9413, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R75/156	Re, J. June 24, 1975	United States Plywood Corp.	R61/10107, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R75/157	Maletz, J. June 26, 1975	B & K Instruments, Inc.	R69/4458	Export value: Invoice unit prices net, packed	Not stated	Agreed statement of facts	Cleveland Electrical instruments
R75/158	Maletz, J. June 26, 1975	Nomura Trading Co., Ltd., et al.	R60/21266, etc.	American selling price	Set forth under column "Unit Value Per Pair" on schedule "A", attached to decision and judgment	Agreed statement of facts	New York Footwear
R75/159	Maletz, J. June 26, 1975	Roser Customs Service	R61/15481	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Brownsville (Laredo) Footwear

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Valuation Decisions on Remand From Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V75/1	Ford, J. February 10, 1975	Border Brokerage Co.	63/616 and 63/639 (C.D. 4227)	Export value	Respective amounts set forth for each on schedule "A" attached to decision and judgment	Agreed statement of facts	Blaine (Seattle) Gasoline operated chain saws with a gasoline motor, imported together, appraised and classified as entireties, separately dutiable
V75/2	Re, J. June 19, 1975	Nagara Trading Co.	61/8874, etc. (Abs. 67217)	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
V75/3	Re, J. June 19, 1975	Valley Hardware Supply, Inc.	63/9253 (Abs. P69/322)	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Houston Footwear

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ADMINISTRATION
MARKING DUTIES
Certain non-glare glass was assessed with marking duties under 19 U.S.C.A. sec. 1304(c) in liquidation, and the plaintiff claimed the assessment of marking duties was illegal.
On the record presented, the court held that in the absence of evidence of customer usage and sales of unmarked merchandise imported in bulk in marked containers such as the imported merchandise, the identity of the ultimate purchasers of such merchandise could not be determined where, as in this case, the importer was not a consumer of the imported merchandise. Accordingly, the action was dismissed for insufficiency of evidence. *Noel R. Chapin Company*, C.D. 4586 66

AFFIDAVIT OF WITNESS
PROOF, SUSTAINED, BURDEN OF (*see* MAN-MADE FIBERS, C.D. 4600).

ALLOY OF IRON OR STEEL POWDER (*see* FERROSILICON, C.D. 4584).

ARTICLES NOT SPECIALLY PROVIDED FOR, OF WOOD
FENCE SECTIONS AND GATES (*see* WOOD PRODUCTS, C.D. 4588).

BALLS, SILICA
SILICA, NOT SPECIALLY PROVIDED FOR
Certain silica balls, described on the invoice as "earth argillaceous," were classified as mineral substances, and articles of mineral substances, not specially provided for, not decorated ,and other than crude mineral substances, under item 523.91, Tariff Schedules of the United States, and were claimed to be classifiable as silica, not specially provided for, under TSUS item 523.11, free of duty.
The court held that the evidence adduced at the trial and post-trial concessions made by the Government established that the imported merchandise consisted of silica balls which were not impregnated with phosphoric acid at the time of importation and that the imported merchandise was properly classified under item 523.11 as claimed by the plaintiff. *Publicker Industries, Inc.* C.D. 4587 71

BRACKETS FOR DOOR CLOSERS
MOUNTINGS, NOT SPECIALLY PROVIDED FOR, SUITABLE FOR DOORS, (*see* BRACKETS FOR DOOR CLOSERS, C.D. 4597).
PARTS OF DOOR CLOSERS
Certain brackets for door closers were classified as mountings, not specially provided for, suitable for doors, under item 647.03, Tariff Schedules of the United States, and were claimed to be properly classifiable as parts of door closers, under TSUS item 646.95.
The court held that the provision for parts of door closers more specifically described the imported articles than the provision for mountings, not specially provided for, suitable for doors, and prevailed under TSUS General Interpretative Rule 10(c). Accordingly, plaintiff's claim under item 646.95 was sustained. *Trans-Atlantic Company*, C.D. 4597 134

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CAST-IRON ARTICLES
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CERAMIC WARE DECANTERS
NONBONE CHINAWARE DECANTERS (*see* DECANTERS, CERAMIC WARE, C.D. 4594).

CHEMICALS
CEMENT, NOT SPECIALLY PROVIDED FOR
Certain merchandise with the trade name Desmocoll 400 was classified as "plastic materials" under item 405.25, Tariff Schedules of the United States, as modified by Presidential Proclamation 3822, and was claimed to be more specifically provided for as cement, not specially provided for, under TSUS item 494.60, as modified.
The court held that the imported merchandise, which was dissolved after importation and used to bond polyvinyl chloride to itself as well as to other substances such as leather and rubber is a cement within the common meaning of that term. Accordingly, plaintiff's claim for classification as a cement, not specially provided for, under item 494.60, was sustained. *Naftone, Inc.*, C.D. 4578 ---------- 1
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75-21
PLASTIC MATERIALS (*see* CHEMICALS, C.D. 4578).

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CLOCK-RADIOS
COMBINATION ARTICLES, OTHER (*see* CLOCK-RADIOS, C.D. 4596).
RADIO RECEPTION APPARATUS, OTHER (*see* CLOCK-RADIOS, C.D. 4596).
SOLID-STATE (TUBELESS) RADIO RECEIVERS
Certain solid-state (tubeless) clock-radios were classified as solid-state (tubeless) radio receivers under item 685.23, Tariff Schedules of the United States, and were claimed to be classifiable as radio reception apparatus under TSUS item 685.25. Alternatively, plaintiff claimed that the imported merchandise was properly classifiable as other combination articles under TSUS item 685.50.
The court held that the superior heading to items 685.10 through 685.50, TSUS, covers certain enumerated articles, including radio

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SOLID STATE (TUBELESS) RADIO RECEIVERS—Continued Page
reception apparatus, "whether or not incorporating clocks or other timing apparatus"; that the "whether or not" phrase modifies or qualifies all of the article descriptions inferior to the superior heading, including item 685.23, which item covers "Solid-state (tubeless) radio receivers," and therefore, solid-state (tubeless) clock-radios were properly classified under item 685.23. Accordingly, the action was dismissed. *Montgomery Ward & Co., Inc.*, C.D. 4596 ---------- 125
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COAL TAR DISTILLATES, OTHER; CRESYLIC
ACID
Certain merchandise invoiced as "Cresylic Compounds Grade 2490," was classified as other coal tar distillates under item 403.46, Tariff Schedules of the United States, and was claimed to be classifiable as cresylic acid under TSUS item 403.42.
On the record presented, the legislative history, dictionary definitions and lexicographic authorities, the court held that the imported merchandise, a chemical product consisting of between 88% to 90% of so-called 2, 4 xylenol, was properly classified under item 403.46 of the tariff schedules as a coal tar distillate rather than under item 403.42 as cresylic acid, as claimed by the plaintiff. Accordingly, the actions were dismissed. *Productol Chemical Co.*, C.D. 4598 ---------- 138
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FINE-GRAINED STONEWARE DECANTERS
Certain ceramic ware decanters were classified as nonbone chinaware decanters under item 533.71, Tariff Schedules of the United States, and were claimed to be classifiable as fine-grained stoneware decanters under TSUS item 533.31.
On the evidence presented the court found that the imported merchandise had distinguishing features from chinaware in that it had clay as an essential ingredient, was off-white and opaque within the tariff definition of stoneware, and therefore was properly classifiable as claimed under item 533.31 as fine-grained stoneware decanters. Accordingly, plaintiff's claim was sustained. *The Twin Wintons*, C.D. 4594 — 115
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–29
DEFINITIONS (*see* WORDS AND PHRASES)
DUMPING DUTIES, LEVY OF
JURISDICTION OF COURT (*see* PROTEST, MOTION TO DISIMISS, C.D. 4591).
DUTIES, AUTHORITY TO LEVY
CONGRESS (*see* KNIVES AND FORKS, C.D. 4582).
"EARTH ARGILLACEOUS"
MINERALS (*see* BALLS, SILICA, C.D. 4587).
ELECTRIC FILAMENT LAMPS
"CHRISTMAS-TREE LAMPS"
Certain merchandise described on the invoices as C–9 type "Christmas Light Bulbs" or "Christmas Bulbs" was classified as "Christmas-tree lamps" under item 686.30, Tariff Schedules of the United States, and was claimed to be classifiable as "other electric filament lamps," under TSUS item 686.90.
On the record presented, the court held that plaintiff had failed to overcome the presumption of correctness attendant upon the Government's classification since it did not establish that the class or kind of merchandise imported was not chiefly used as Christmas-tree lamps, and that the imported C–9 bulbs come within the common meaning of the term "Christmas-tree lamps" as used in item 686.30. Accordingly, plaintiff's claim was overruled. *Esco Manufacturing Co., aka J. Hofert Co.*, C.D. 4585 — 57
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–27
OTHER (*see* ELECTRIC FILAMENT LAMPS, C.D. 4585).

ELECTRICAL ELEMENT OR DEVICE (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).

ENTIRETIES

CABANA SETS

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Certain cotton shirts were classified as shirts of cotton, not knit or crocheted, under par. 919, Tariff Act of 1930, and certain cotton slacks and shorts were classified as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for, under par. 919. Plaintiff claimed that the cabana sets and the shirt and short sets were similar in all material respects to the cabana sets in *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966), and that the shirt and slack sets and the flannel shirt and lined corduroy slack sets were similar to the flannel shirts and corduroy longie sets in *The Nissho American Corp.* v. *United States*, 64 Cust. Ct. 378, C.D. 4005 (1970), which sets, in each case, were held to be entireties as clothing and wearing apparel, wholly or in chief value of cotton, not specially provided for under said par. 919.

On the record presented, the court held that the imported sets, which were designed, purchased, imported, invoiced, advertised, and sold at wholesale and at retail as a unit, and not separately, were properly dutiable as entireties under par. 919, as other clothing and articles of wearing apparel, wholly or in chief value of cotton, not specially provided for, as claimed, *W. T. Grant Co.*, C.D. 4579 3

FLANNEL SHIRT AND LINED CORDUROY SLACK SETS (*see* ENTIRETIES, C.D. 4579).

SHIRT AND

Short sets (*see* ENTIRETIES, C.D. 4579).

Slack sets (*see* ENTIRETIES, C.D. 4579).

ENTRY PAPERS, PROTEST, AND COMPLAINT COVERING MOLDS REPAIRED ABROAD

JURISDICTION (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).

EO NOMINE

DESIGNATION

Congressional intent (*see* PLYWOOD, C.D. 4583).

For plywood; plywood cut to size (*see* PLYWOOD, C.D. 4583).

PROVISION

"Christmas-tree lamps" (*see* ELECTRIC FILAMENT LAMPS, C.D. 4585).

Statutory construction (*see* TRACHEOTOMY AND NASO-PHARYNGEAL TUBES, C.D. 4599).

EQUIPMENT SPECIALLY DESIGNED FOR PHOTOFINISHING (STILL PICTURE): OTHER, NOT SPECIALLY PROVIDED FOR (*see* REELS, STAINLESS STEEL, C.D. 4589).

ESCAPE-CLAUSE PROVISION

IMPORT QUOTAS (*see* KNIVES AND FORKS, C.D. 4582).

EVIDENCE

BURDEN OF PROOF (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).

INSUFFICIENCY OF; CONTAINERS, MARKING OF (*see* ADMINISTRATION, C.D. 4586).

SAMPLES OF IMPORTED ARTICLES, ABSENCE OF (*see* ENTIRETIES, C.D. 4579).

FENCE

POSTS

Corner adaptors, and cleats; other lumber whether or not drilled or treated (*see* WOOD PRODUCTS, C.D. 4588).

Wood poles, piles and posts (*see* WOOD PRODUCTS, C.D. 4588).

SECTIONS

And gates; articles not specially provided for, of wood (*see* WOOD PRODUCTS, C.D. 4588).

Corner adaptors, and cleats; wood fence pickets, palings and rails, whether or not assembled into fence sections (*see* WOOD PRODUCTS, C.D. 4588).

FERROALLOY (*see* FERROSILICON, C.D. 4584).

FERROSILICON

ALLOY OF IRON OR STEEL POWDER (*see* FERROSILICON, C.D. 4584).

FERROALLOY

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Certain imported ferrosilicon was classified as an alloy of iron or steel powder, other than stainless steel powder, under item 608.08, Tariff Schedules of the United States, and was claimed to be classifiable as ferrosilicon containing over 8 percent but not over 60 percent by weight of silicon (not over 30 percent manganese), dutiable under TSUS item 607.50 at 0.4 cent per pound on the silicon content.

The court held that the imported ferrosilicon was *eo nomine* more specifically provided for under the superior heading "ferroalloys" than under the superior heading "iron or steel powders" wherein under the inferior heading "Other powders" it was rated dutiable under item 608.08 as "alloy iron or steel powder" other than stainless steel powder; and that it was properly classifiable under the TSUS superior heading "ferroalloys" as that dutiable product *eo nomine* provided for under the inferior heading item 607.50 as ferrosilicon containing over 8 percent but not over 60 percent, by weight, of silicon, as claimed by plaintiff. Accordingly, the claim under item 607.50 was sustained. *The Carborundum Company*, C.D. 4584 50

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–26

FIBERS, MAN-MADE

GROUPED FILAMENTS, OTHER (see MAN-MADE FIBERS, C.D. 4600).

FINE-GRAINED STONEWARE DECANTERS (*see* DECANTERS, CERAMIC WARE, C.D. 4594).

FLANNEL SHIRT AND LINED CORDUROY SLACK SETS (see ENTIRETIES, C.D. 4579).

FOOTWEAR

CARBON, ARTICLES COMPOSED WHOLLY OR IN PART OF (*see* FOOTWEAR, C.D. 4595).

SLUSH POUR-TYPE MACHINERY (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).

SYNTHETIC RUBBER, ARTICLES MANUFACTURED IN WHOLE OR IN PART OF

Certain black colored articles of footwear in chief value of synthetic rubber and containing an undisclosed amount of carbon, were classified as articles composed wholly or in part of carbon under par. 216, Tariff Act of 1930, and were claimed to be classifiable as articles manufactured in whole or in part of synthetic rubber, under par. 1558 of said act. Cross-motions for summary judgment were filed by the parties to the involved consolidated actions.

The court held that the carbon which had been added to the imported articles of footwear did not change them into articles composed in part of carbon, and that said imported articles of footwear were not properly classifiable under par. 216. Accordingly, plaintiff's motion for summary judgment was granted and defendant's cross-motion was denied. *Sumitomo Shoji New York, Inc.*, C.D. 4595 121

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–31

FROZEN ONIONS

NOT REDUCED IN SIZE (*see* ONIONS, FROZEN, C.D. 4590).

ONIONS CUT, SLICED OR OTHERWISE REDUCED IN SIZE (*see* ONIONS, FROZEN C.D. 4590).

GAS MASKS AND SIMILAR RESPIRATORS

RESPIRATORY EQUIPMENT (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

GRAMMATICAL CONSTRUCTION

PAR. 1312, AS AMENDED (*see* MATS, PLASTIC TABLE, C.D. 4592).

GROUPED FILAMENTS, OTHER (*see* MAN-MADE FIBERS, C.D. 4600).

HUB CASTINGS

MACHINES, PARTS OF (*see* HUB CASTINGS, C.D. 4580).

PARTS OF MACHINES

Certain hub castings were classified as parts of machines under item 678.50, Tariff Schedules of the United States, and were claimed to be classifiable as cast-iron articles under TSUS item 657.09.

HUB CASTINGS—Continued
PARTS OF MACHINES—Continued Page
The court held that the imported hub castings, which were unfinished cast-iron parts of machines, were properly classified as parts of machines and not as cast-iron articles pursuant to the ordinary rules of relative specificity and statutory interpretation as contained in General Interpretative Rules 10(c), 10(h) and 10(ij). Accordingly, the claims of the plaintiff were overruled. *John V. Carr & Son, Inc.*, C.D. 4580---- 10
Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–23
IDENTITY OF ULTIMATE PURCHASERS
MARKING OF CONTAINERS (*see* ADMINISTRATION, C.D. 4586).
IMPORT QUOTAS
ESCAPE-CLAUSE PROVISION (*see* KNIVES AND FORKS, C.D. 4582).
INSPECTION UNIT
MACHINE, NOT SPECIALLY PROVIDED FOR (*see* OPTICAL INSTRUMENTS, C.D. 4602).
OPTICAL
Checking instrument
(*see* OPTICAL INSTRUMENTS, C.D. 4602).
JUDICIAL POLICY
COMMON MEANING (*see* PLYWOOD, C.D. 4583).
JURISDICTION
ENTRY PAPERS, PROTEST, AND COMPLAINT COVERING MOLDS REPAIRED ABROAD (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).
OF COURT
Dumping duties, levy of (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).
Protest filed by authorized person (*see* PROTEST, MOTION TO DISMISS, C.D. 4951).
OVER CIVIL ACTION; PROTEST FIRST FILED AND DENIED BY CUSTOMS OFFICER (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).
KNIVES AND FORKS
RATE-QUOTA PROVISIONS, VALIDITY OF
Certain stainless steel knives and forks were assessed with duty at the rate of 3 cents each plus 67.5 per centum ad valorem under item 927.53, Tariff Schedules of the United States. Plaintiff claimed that said knives and forks were properly dutiable under TSUS items 650.09 and 653.39, at the rate of 1 cent each plus 12.5 per centum ad valorem. Plaintiff moved for summary judgment and defendant filed a cross-motion for judgment on the pleadings. The issue presented to the court was the validity of the rate-quota provisions under which the district director assessed duty upon the imported articles pursuant to Presidential Proclamation No. 3323.
The court held that Presidential Proclamation No. 3323, which established an annual rate quota on imports of table spoons, table knives and table forks, wholly of metal and in chief value of stainless steel, not over 10.2 inches in over-all length and valued under $3 per dozen pieces, was void since the President failed to follow the procedures authorized by Congress for escape-clause action pursuant to section 7(c) of the Trade Agreements Extension Act of 1951, as amended; that while it was true that the escape-clause provisions in Proclamation No. 3323 were incorporated into an Appendix to the Tariff Schedules, the proclamation of the schedules (including the appendix) did not alter the legal status of such provisions as escape-clause action taken pursuant to section 7 of the Trade Agreements Extension Act of 1951, as amended; and that since Proclamation No. 3323 was invalid, *a fortiori* items 927.50 through 927.54, which were based upon that void proclamation were similarly invalid. Accordingly, plaintiff's motion for summary judgment was granted, and defendant's motion for judgment on the pleadings was denied. *National Silver Company*, C.D. 4582---- 18
Appealed to U. S. Court of Customs and Patent Appeals, Appeal 75–24
VALIDITY OF RATE-QUOTA PROVISIONS (*see* KNIVES AND FORKS, C.D. 4582.)

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LACK OF STANDING TO SUE (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).

LAMP, ELECTRIC FILAMENT (*see* ELECTRIC FILAMENT LAMPS, C.D. 4585).

LEGISLATIVE HISTORY
- HOUSE REPORT NO.
  - 342, 89th Congress, 1st Sess. (1965) (*see* CLOCK-RADIOS, C.D. 4596).
  - 1761, 85th Cong., 2d Sess. (1958) (*see* KNIVES AND FORKS, C.D. 4582).
- RESPIRATORY EQUIPMENT (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).
- SUMMARIES OF TARIFF INFORMATION, 1948, VOL. 1, PART 2 (*see* COAL TAR DISTILLATES, OTHER, C.D. 4598).
- SUMMARIES OF TRADE AND TARIFF INFORMATION (TSUS), 1968
  - Schedule 1, Vol. 7 (*see* ONIONS, FROZEN, C.D. 4590).
  - Schedule 7, Vol. 3 (*see* REELS, STAINLESS STEEL, C.D. 4589).
- TARIFF CLASSIFICATION STUDY, 1960
  - Explanatory and Background Materials
    - Schedule 2 (*see* WOOD PRODUCTS, C.D. 4588).
    - Schedule 4 (*see* COAL TAR DISTILLATES, OTHER, C.D. 4598).
    - Schedule 6
      - (*see* CLOCK-RADIOS, C.D. 4596).
      - (*see* FERROSILICON, C.D. 4584).
    - Schedule 7
      - (*see* OPTICAL INSTRUMENTS, C.D. 4602).
      - (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).
    - Schedule 8, Special Classifications Provisions Appendix to the Tariff Schedules (*see* KNIVES AND FORKS, C.D. 4582).
  - Submitting Report (*see* FERROSILICON, C.D. 4584).
- TARIFF COMMISSION REPORT NO.
  - 131 (2d ser. 1938—*Synthetic Resins and their Raw Materials*) (*see* COAL TAR DISTILLATES, OTHER, C.D. 4598).
  - 133, Incandescent Electric Lamps (2d series, 1939) (*see* ELECTRIC FILAMENT LAMPS, C.D. 4585).

LEGISLATIVE INTENT
- STATUTORY INTERPRETATION (*see* CLOCK-RADIOS, C.D. 4596).

LITERAL MEANING *V.* CONTRARY LEGISLATIVE INTENT
- STATUTORY CONSTRUCTION (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

MACHINE, NOT SPECIALLY PROVIDED FOR
- INSPECTION UNIT (*see* OPTICAL INSTRUMENTS, C.D. 4602).

MACHINES, PARTS OF (*see* HUB CASTINGS, C.D. 4580).

MAN-MADE FIBERS
- WASTE OF MAN-MADE FIBERS, ADVANCED, OTHER

  Certain merchandise, described on the invoices as "nylon 66 tow", was classified as grouped filaments of man-made fibers, in continuous form, under item 309.30, Tariff Schedules of the United States, and was claimed to be classifiable as advanced waste of man-made fibers, other, under TSUS item 309.75. Plaintiff moved for summary judgment, contending that the issue involved had been previously determined in *E. Dillingham, Inc.* v. *United States*, 70 Cust. Ct. 43, C.D. 4406 (1973), since the merchandise was the same as established by the affidavit of a witness in the original case.

  Based upon the affidavit of plaintiff's witness and following the principles laid down in the *Dillingham* case, *supra*, the court found that the plaintiff had sustained its burden of proof and that the imported merchandise was dutiable as claimed. Accordingly, plaintiff's motion for summary judgment was granted. *E. Dillingham, Inc.*, C.D. 4600 160

MANUFACTURE
- PROCESSING OF PLYWOOD PANELS (*see* PLYWOOD, C.D. 4583).

MANUFACTURES OF — Page
FILAMENTS, FIBERS, YARNS, OR THREADS, OF RAYON OR OTHER SYNTHETIC TEXTILS (*see* MATS, PLASTIC TABLE, C.D. 4592).
GRASS, SEA GRASS, STRAW OR WEEDS, BY SIMILITUDE (*see* MATS, PLASTIC TABLE, C.D. 4592).
WOOD; PANELS (*see* PLYWOOD, C.D. 4583).

MARKING
DUTIES (*see* ADMINISTRATION, C.D. 4586).
OF CONTAINERS; IDENTITY OF ULTIMATE PURCHASERS (*see* ADMINISTRATION, C.D. 4586).

MASTER RULE
STATUTORY CONSTRUCTION (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

MATS, PLASTIC TABLE
MANUFACTURES OF FILAMENTS, FIBERS, YARNS OR THREADS, OF RAYON OR OTHER SYNTHETIC TEXTILE

Certain plastic table mats manufactured from polyvinyl chloride hollow tubular structures was classified as manufactures of filaments, fibers, yarns, or threads, of rayon or other synthetic textile, under par. 1312, Tariff Act of 1930, and were claimed to be classifiable as manufactures of grass, sea grass, straw or weeds, under par. 1537(a), of said act, by virtue of the similitude provision in par. 1559(a) of said act, as amended.

The court held that the merchandise was properly classified under par. 1312. In so holding, the court rejected as untenable the contention of the plaintiff that par. 1313 as amended, requires all rayon or synthetic textiles to be suitable for the manufacture of textiles; that the use of a comma after "fibrous structure," in conjunction with the word "and," and the placing of the phrase "suitable for the manufacture of textiles" in parentheses clearly evidence the intent of Congress to cover any band or strip not over 1 inch in width; but the phrase "suitable for the manufacture of textiles" does not modify "rayon or other synthetic textile" or "any fiber, filament, or fibrous structure," utilized in the first portion of said definition. Accordingly, the claim of the plaintiff was overruled. *The A. W. Fenton Co., Inc.*, C.D. 4592 ---------- 100

MINERAL SUBSTANCES (*see* BALLS, SILICA, C.D. 4587).

MINERALS
"EARTH ARGILLACEOUS" (*see* BALLS, SILICA, C.D. 4587).

MOLDS
REPAIRED ABROAD; COST OF REPAIRS (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).
(*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).

MOTION FOR SUMMARY JUDGMENT
(*see* MAN-MADE FIBERS, C.D. 4600).
SUMMARY JUDGMENT, CROSS-MOTION FOR
(*see* BRACKETS FOR DOOR CLOSERS, C.D. 4597).
(*see* FOOTWEAR, C.D. 4595).

MOUNTINGS NOT SPECIALLY PROVIDED FOR, SUITABLE FOR DOORS (*see* BRACKETS FOR DOOR CLOSERS, C.D. 4597).

NONBONE CHINAWARE DECANTERS (see DECANTERS, CERAMIC WARE, C.D. 4594).

NOT SPECIALLY PROVIDED FOR CLAUSE
SPECIFICITY OF PROVISION, RELATIVE (*see* BRACKETS FOR DOOR CLOSERS, C.D. 4597).

ONIONS
CUT, SLICED OR OTHERWISE REDUCED IN SIZE (*see* ONIONS, FROZEN, C.D. 4590).
FROZEN; ONIONS NOT REDUCED IN SIZE

Certain frozen onions were classified as "Vegetables, fresh, chilled, or frozen, and cut, sliced, or otherwise reduced in size (but not otherwise prepared or preserved)," under item 138.00, Tariff Schedules

ONIONS—Continued
FROZEN; ONIONS NOT REDUCED IN SIZE—Continued Page
of the United States, and were claimed to be classifiable as "Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved): Onion: * * * Other," under TSUS item 136.91
Since the record showed that in both the United States and the country of exportation the roots, tops, and outer skin of such onions were virtually always removed as an incident of placing them in a marketable condition, the court held that the imported frozen onions were properly classifiable under item 136.91 which provides for frozen onions "not reduced in size." Accordingly, the plantiffs' claims were sustained. *General Freight Services, Inc., a/c Lamb-Weston, Inc.; Lamb-Weston, Inc.; North Pacific Canners & Packers, Inc.*, C.D. 4590 87
OPACITY, QUALITY OF
STONEWARE (*see* DECANTERS, CERAMIC WARE, C.D. 4594).
OPTICAL
CHECKING INSTRUMENT; INSPECTION UNIT (*see* OPTICAL INSTRUMENTS, C.D. 4602).
INSTRUMENTS
Inspection unit
A certain article known as a "Strunck Ampoule Inspection Unite, Type ADG 500," was classified as an optical checking instrument under item 710.90, Tariff Schedules of the United States, and was claimed to be classifiable as a machine, not specially provided for, under TSUS item 678.50.
The court found that the term "optical instruments" is defined in the Tariff Schedules of the United States as embracing instruments which incorporate one or more optical elements, but does not include any instrument in which the incorporated element or elements are solely for viewing a scale or for some other subsidiary purpose, and held that on the record and argument presented, considering the term "optical instruments" as defined in TSUS, plaintiff had not overcome the presumption that the imported unit was classifiable under item 710.90 as an optical checking instrument. Accordingly, the action was dismissed. *Amaco, Inc.*, C.D. 4602 172
Presumption of correctness (*see* OPTICAL INSTRUMENTS, C.D. 4602).
OTHER LUMBER WHETHER OR NOT DRILLED OR TREATED
FENCE POSTS, CORNER ADAPTORS, AND CLEATS (*see* WOOD PRODUCTS, C.D. 4588).
PANELS, PLYWOOD (*see* PLYWOOD, C.D. 4583).
PAR. 1312, AS AMENDED
GRAMMATICAL CONSTRUCTION (*see* MATS, PLASTIC TABLE, C.D. 4592).
SYNTHETIC TEXTILE (*see* MATS, PLASTIC TABLE, C.D. 4592).
PARTS OF
DOOR CLOSERS (*see* BRACKETS FOR DOOR CLOSERS, C.D. 4597).
MACHINES (see HUB CASTINGS, C.D. 4580).
PHOTOGRAPHIC FILM REELS (*see* REELS, STAINLESS STEEL, C.D. 4589).
PLASTIC MATERIALS (*see* CHEMICALS, C.D. 4578).
PLYWOOD
CUT TO SIZE; EO NOMINE DESIGNATION FOR PLYWOOD (*see* PLYWOOD, C.D. 4583).
PANELS
Manufactures of wood (*see* PLYWOOD, C.D. 4583).
Plywood
Certain plywood panels were classified as plywood under par. 405, Tariff Act of 1930, and were claimed to be classifiable as manufactures of wood, under par. 412 of said act.
The court held that the imported prefinished grooved plywood panels were a form or variation of "decorative plywood" and were

PLYWOOD—Continued
PANELS—Continued
Plywood—Continued Page
properly classified under the *eo nomine* provision in par. 405; that the fact that the said plywood panels had been cut and made suitable for a particular use did not necessarily prevent their classification under the *eo nomine* designation for plywood; and that the imported V-grooved plywood paneling did not lose its identity as plywood nor did the processing result in a "new and different article" having a distinctive name, character or use. Accordingly, the protests were overruled. *C. T. Takahashi & Co., Inc.*, C.D. 4583 38
Wall paneling (*see* PLYWOOD, C.D. 4583).
PRESIDENT
RATES OF DUTY, POWER TO RAISE OR LOWER (*see* KNIVES AND FORKS, C.D. 4582).
PRESUMPTION OF CORRECTNESS
BURDEN OF PROOF
(*see* ELECTRIC FILAMENT LAMPS, C.D. 4585).
(*see* MATS, PLASTIC TABLE, C.D. 4592).
(*see* OPTICAL INSTRUMENTS, C.D. 4602).
(*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).
PROCESSING OF PLYWOOD PANELS
MANUFACTURE (*see* PLYWOOD, C.D. 4583).
PROOF, SUSTAINED, BURDEN OF
AFFIDAVIT OF WITNESS (*see* MAN-MADE FIBERS, C.D. 4600).
PROTEST
FILED BY AUTHORIZED PERSON; JURISDICTION OF COURT (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).
FIRST FILED AND DENIED BY CUSTOMS OFFICER; JURISDICTION OVER CIVIL ACTION (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).
FOR EACH ENTRY, FILING OF MORE THAN ONE; ACTION AGAINST SAME ENTRY, SECOND CIVIL (*see* PROTEST, MOTION TO DISMISS, C.D. 4591).
MOTION TO DISMISS; LACK OF STANDING TO SUE
Plaintiff filed four protests against a levy of dumping duty on certain imported sulphur, which protests were denied. Plaintiff filed a summons and complaint to invalidate the assessments. Defendant moved pursuant to rule 4.7(b) to dismiss the action on the ground, among others, that plaintiff lacked standing to sue.
The court found that the plaintiff was neither the importer nor the consignee of the imported merchandise; that plaintiff had not contended, nor was there any indication in the record, that it was an authorized agent of the person paying the duties in question; and that plaintiff was clearly not one of the persons authorized to file a protest pursuant to 19 U.S.C. 1514.
Therefore the protests filed on behalf of plaintiff, while denied by the Customs Bureau, were improperly filed and could not form the basis of a civil action under 28 U.S.C. 1582. The court noted that there was another action pending before the court which raised the identical issues with respect to the same entries, and thus the prohibition in 19 U.S.C. 1514(b)(1) against the filing of more than one protest for each entry of merchandise was an additional reason for concluding that the protests involved in this action had been improperly filed and could not give rise to a second civil action directed against the same entries. Accordingly, defendant's motion to dismiss was granted and the action was dismissed. *Azufrera Panamericana, S.A.*, C.D. 4591). 97
RADIO RECEPTION APPARATUS
OTHER (*see* CLOCK-RADIOS, C.D. 4596).
TRADE AGREEMENT MODIFICATION OF TARIFF SCHEDULES (*see* CLOCK-RADIOS, C.D. 4596).
RATE-QUOTA PROVISIONS, VALIDITY OF (*see* KNIVES AND FORKS, C.D. 4582).
RATES OF DUTY, POWER TO RAISE OR LOWER
PRESIDENT (*see* KNIVES AND FORKS, C.D. 4582).

REDUCED IN SIZE (*see* ONIONS, FROZEN, C.D. 4590).

REELS, STAINLESS STEEL

PHOTOGRAPHIC FILM REELS

Page

Certain stainless steel reels were classified as "Photographic film reels," under item 722.80, Tariff Schedules of the United States, and were claimed to be classifiable as "Equipment specially designed for photofinishing (still picture) : Other, not specially provided for," under TSUS item 722.94. The parties agreed that there was no genuine issue of fact and filed cross-motions for summary judgment pursuant to rule 8.2 of the rules of the court.

Based upon a consideration of lexicographic authorities, dictionary definitions and the pertinent legislative history, the court held that the common meaning of "photographic film reel" encompasses reels such as the imports, used for holding exposed film in the photofinishing process; and that since the *eo nomine* provision for photographic film reels in item 722.80 specially provided for the imported reels, they are excluded from classification under the residual provision for equipment specially designed for photo-finishing not specially provided for in item 722.94. Accordingly, the cross-motion of defendant for summary judgment was granted, and plaintiff's motion was denied. *Ehrenreich Photo-Optical Industries, Inc.*, C.D. 4589---------- 83

RELATIVE SPECIFICITY

STATUTORY INTERPRETATION (*see* HUB CASTINGS, C.D. 4580).

RESORT TO LEGISLATIVE HISTORY NOT PROSCRIBED BY APPARENTLY CLEAR STATUTE

STATUTORY CONSTRUCTION (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

RESPIRATORY EQUIPMENT

GAS MASKS AND SIMILAR RESPIRATORS (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

LEGISLATIVE HISTORY (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

TUBES (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).

SAMPLES OF IMPORTED ARTICLES, ABSENCE OF

EVIDENCE (*see* ENTIRETIES, C.D. 4579).

SHIRT AND

SHORT SETS (*see* ENTIRETIES, C.D. 4579).

SLACK SETS (*see* ENTIRETIES, C.D. 4579).

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COTTON SHIRTS (*see* ENTIRETIES, C.D. 4579).

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IN WHOLE OR IN PART

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Certain molds used with the Bata Monoplax Atlas Unit for the production of footwear were classified as parts of articles having as an essential feature an electrical element or device, under paragraph 353, Tariff Act of 1930, and were claimed to be free of duty as shoe machinery, in whole or in part, under paragraph 1643 of said act.

The court held that while the Bata Monoplax Atlas Unit might be an improved version of slush molding machinery of the two-pour type, the evidence did not establish that it was a special kind in a class by itself, and since there was no proof that slush molding pour-type machinery was chiefly used in the manufacture of shoes at the time of the instant importations, plaintiff's claim could not be sustained.

The court also held that the entry papers, the protest, and the complaint covering molds repaired abroad and assessed with duty on the cost of repairs pursuant to paragraphs 353 and 1615, Tariff Act of 1930, as modified, were sufficient to bring the merchandise and the issue before the court. Accordingly, the action was dismissed. *E. Dillingham, Inc.*, C.D. 4601---------- 162

SHOE MACHINERY—Continued
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Literal meaning *v.* contrary legislative intent (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).
Master rule (*see* TRACHEOTOMY AND NASOPHARYNGEAL TUBES, C.D. 4599).
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Specificity, relative (*see* HUB CASTINGS, C.D. 4580).
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TRACHEOTOMY AND NASOPHARYNGEAL TUBES
CATHETERS Page

Certain merchandise described as tracheotomy and nasopharyngeal tubes, and articles of similar descriptions were classified as catheters, under item 709.09, Tariff Schedules of the United States, and was claimed to be classifiable as respiratory equipment, under TSUS 709.45.

The court held that in classification cases the protestant has the burden of establishing not only that the Government's classification was incorrect, but also of establishing the correctness of the classification asserted, and that unless the plaintiff has established the propriety of its asserted classification, the protest must be overruled, and it is unnecessary to consider whether or not the Government's classification is wrong. On the record presented the court found that the plaintiff had failed to establish the propriety of its claim under item 709.45, and overruled the protests without reaching the issue of whether the merchandise was properly classified by the regional commissioner under item 709.09. *American Rusch Corp.*, C.D. 4599 153

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TRADE AGREEMENT MODIFICATION OF TARIFF SCHEDULES
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(*see* WOOD PRODUCTS, C.D. 4588).
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(*see* WOOD PRODUCTS, C.D. 4588).
PRODUCTS; WOOD
Fence pickets, palings and rails, whether or not assembled into fence sections (*see* WOOD PRODUCTS, C.D. 4588).
Poles, piles and posts

Certain fence sections, formal gates and stockade gates were classified as articles not specially provided for, of wood, under item 207.00, Tariff Schedules of the United States, while certain fence posts, corner adaptors, and cleats were classified as other lumber whether or not drilled or treated, under TSUS item 202.54. Plaintiff claimed that the fence posts were entitled to entry free of duty as wood poles, piles and posts, under TSUS item 200.60, and that the balance of the merchandise should be classified as wood fence pickets, palings and rails, whether or not assembled into fence sections under TSUS item 200.75.

On the record presented, together with a consideration of the pertinent legislative history, the court held that the imported fence sections, posts, gates, corner adaptors and cleats which were treated with a pigmented preservative were properly subject to free entry as claimed by the plaintiff, under items 200.75 and 200.60. *Arthur J. Humphreys, Inc.*, C.D. 4588 73

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–28

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CRESOL (*see* COAL TAR DISTILLATES, OTHER, C.D. 4598).
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FRACTIONAL DISTILLATION (*see* COAL TAR DISTILLATES, OTHER, C.D. 4598).
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REEL (*see* REELS, STAINLESS STEEL, C.D. 4589).
SLUSH MOLDING (*see* SHOE MACHINERY, IN WHOLE OR IN PART, C.D. 4601).
WOOD PRESERVATION (*see* WOOD PRODUCTS, C.D. 4588).

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Constructed value—Plaintiff's proof of constructed value, consisting in large part of a document setting out the elements of value with persuasive supporting material, was sufficient to prove the claimed value. Plaintiff's overall proof was sufficient to preclude any negative inferences arising from the seller and buyer being related companies. A single inconsistent sale by the exporter to an unrelated purchaser was adequately explained. C.D. 4581 13

Constructed value—presumption of correctness—burden of proof—evidence. The court held that in value cases, particularly those pertaining to cost of production or constructed value, the evidence is subject to careful scrutiny by the court; that the record in the instant case not only failed to rectify the evidentiary deficiencies in a previous case, the record of which had been incorporated, but also created ambiguities and revealed unexplained discrepancies in testimony; and that the testimony offered in the instant case, as to costs of fabrication and packing, consisted solely of conclusory statements totally unsupported by evidentiary facts. C.D. 4593 105

Appealed to U.S. Court of Customs and Patent Appeals, Appeal 75–30

Export or foreign value—Aside from the need to prove the appraised value erroneous, an importer claiming foreign value as the proper basis of appraisement had the burden of demonstrating that its claimed value for the merchandise in question sold in the home market was higher than the export value for such or similar merchandise, or that there was no export value for such or similar merchandise. Since the importer did not meet this burden, the court held that the importer's appeals for reappraisement must be dismissed and the appraised values affirmed. R.D. 11777 181

Rehearing denied April 24, 1975

Export or foreign value—The importer's burden of proving the correct dutiable value extends to both export and foreign value is required by section 402(a)(1) of the Tariff Act of 1930, as amended, which required a choice between "whichever is higher." R.D. 11777 181

Rehearing denied April 24, 1975

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Limited only to the attorney of record or a party to the action, availability of (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).
With names of importers and manufacturers excised (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).
MERCHANDISE WAS CLASSIFIED AND LIQUIDATED, SHOW (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).
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VINYL REINDEER; TOY FIGURES OF ANIMATE OBJECTS (EXCEPT DOLLS)

Certain inflatable vinyl reindeer and Santa Clause figures and sets were classified as other toy figures of animate objects (except dolls) not having a spring mechanism, not stuffed, and not wholly or almost wholly of metal, under item 737.40, Tariff Schedules of the United States, and were claimed to be classifiable as other Christmas ornaments of rubber or plastics under TSUS item 772.97. Plaintiff filed a motion for summary judgment.

The court noted that while it was not necessary for plaintiff to offer a sample of the imported merchandise, which it did not, that it must present adequate evidence to establish the nature and essential characteristics of the importation, and that the evidence presented by the plaintiff provided no information concerning the particular qualities of the importations which were necessary for determination of the action. Accordingly, plaintiff's motion for summary judgment was denied. *L. B. Watson Co., a/c Murphy Reir, Inc.*, C.R.D. 75–2..... 193

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REPORTS

Limited only to the attorney of record or a party to the action, availability of (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).

Reports with names of importers and manufacturers excised (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).

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LEGAL SERVICES

FAIR AND REASONABLE VALUE OF; LAW FIRM, FORMER

Pursuant to a motion filed with the court an order was entered substituting a new law firm as attorney for the plaintiff in a certain action and in all other actions in plaintiff's name pending before the court in which a former law firm appeared as attorney of record, after which, at a hearing, the respective counsel presented oral arguments, memoranda and some documents with respect to the matter of compensation. The issue presented to the court for determination was the fair and reasonable value of the legal services, if any, which may have been performed by the former law firm during the period of time it represented the plaintiff in the cases pending before the court.

On the record before it the court found that no specific evidence with respect to the nature, value and extent of the services performed by the former law firm in connection with the preparation and filing of the protests, summonses and complaints had been presented to it. Recognizing that contingent fees had been agreed upon between the plaintiff and the former law firm with respect to cases of the nature which were presently before it, the court ordered that the plaintiff pay the former law firm or its duly authorized representative in all cases relating solely to the imposition of the surcharge pursuant to Presidential Proclamation 4074 a sum equivalent to 3% of the total recovery, and in all other cases a sum equivalent to 6% of the total recovery; that the plaintiff, upon the receipt of any recovery and payments from the Treasury Department in connection with the involved cases, should pay said sum and/or sums to the former law firm or its duly authorized representative; that the former law firm should have a lien upon the

LEGAL SERVICES—Continued
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proceeds of said recoveries until the contingent fees in the amount as aforesaid were fully paid; and that the court should retain jurisdiction over the subject matter and the parties to the involved proceedings until all the conditions set forth in the court's order had been fully complied with. *Nadel & Sons Toy Corp.*, C.R.D. 75–3 ---------- 195
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Plaintiff moved to compel discovery, requesting the defendant to produce all laboratory reports, covering a certain period of time, on ferrous powders, the work sheets on which said reports were based, and certain C.I.E. rulings, without the deletions of the names of the manufacturers (where known to the government), the names of the importers and trade names of the imported merchandise (where known to the government). At the oral argument on the motion plaintiff limited its requests and the government agreed to the requests except the request to furnish the names of the producers, importers, and trade names of those imported metal powders other than the metal powders before the court, contending that it did not keep records of trade names, and that the names of the other producers and importers were given to it in confidence, and for competitive reasons should not be divulged.
The court held that in discovery proceedings, discovery is limited to a party's needs in prosecuting or defending against a claim; that the disclosures agreed to by the government were sufficient to enable the plaintiff to prosecute its claim; that to order that the excised names of importers and manufacturers and trade names (where known to the government) be disclosed would force the government to breach its obligation to hold in confidence commercial information which should not be disclosed for competitive reasons; and also that the plaintiff had not shown that it had a proper legal interest in the residual disclosure it sought. Accordingly, the court ordered that copies of the documents sought by the plaintiff, as modified at the oral argument on the motion for discovery, after the excision therefrom of the names of the manufacturers, importers, and trade names (where known to the government), be furnished to the plaintiff. *F. W. Myers & Co., Inc.*, C.R.D. 75–1 ---------- 191
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(*see* INFLATABLE VINYL REINDEER FIGURES, C.R.D. 75–2).

WORK SHEETS EXPLAINING TESTS AND ANALYSES (*see* MOTION TO COMPEL DISCOVERY, C.R.D. 75–1).